

# **FSA**

## **HANDBOOK**

---

## Direct Loan Servicing – Debt Collection and Resolution

---

To access the transmittal page click on the short reference

**For State and County Offices**

SHORT REFERENCE

**7-FLP**

UNITED STATES DEPARTMENT OF AGRICULTURE  
Farm Service Agency  
Washington, DC 20250



UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency  
Washington, DC 20250

**Direct Loan Servicing – Debt  
Collection and Resolution  
7-FLP**

**Amendment 9**

**Approved by:** Deputy Administrator, Farm Loan Programs



**Amendment Transmittal**

**A Reasons for Amendment**

The following have been amended to remove references to 7 CFR Parts 1951 and 1956, duplicative guidance, outdated guidance, and update guidance and regulatory references where needed.

**Note:** 7 CFR Parts 1951 and 1956 are no longer applicable to FLP.

- Subparagraphs 1 B, 61 B, 131 A, 133 A, 401 A, 401 E, 403 A, 403 B, 403 C, 403 D, 403 E, 403 F, 404 C, 405 A, 405 C, 407 B, 407 C, 407 D, 408 F.
- Subparagraph 409 C has been removed and subsequent subparagraphs renumbered because it referenced an obsolete regulation.
- Exhibit 8 paragraph E, and Exhibit 12 paragraphs A and B.

Subparagraph 1 C has been amended to use a current regulatory reference.

Subparagraphs 21 A, 23 B, 23 C 101 A, 221 A, 226 A, 401 A, and Exhibit 8 paragraph A have been amended to update regulatory references for some FLP debt management and debt settlement provisions that were incorporated into the USDA Department wide regulation 7 CFR Part 3.

Subparagraphs 21 B, 61 A, 62 A and C, 63 D, 81 A and B, 101 A, 131 C, 133 A, 241 A, B, and 241 C, 242 A, 243 A, 244 A, and 401A have been amended to update regulatory references and update guidance for debt management and debt settlement provisions that are in the newly revised 7 CFR Part 3 that are applicable to FLP.

Subparagraphs 22 A, 131 B, 131 C, 132 A, 134 A, 134 B, and paragraph 138 have been amended to update regulatory references to 7 CFR part 3 for Federal salary offset and provide updated guidance.

**Note:** 7 CFR part 1951 is no longer applicable to FLP.

## Amendment Transmittal (Continued)

### A Reasons for Amendment (Continued)

Paragraph 23 and subparagraphs 63 B, 63 E, 135 A, 244 C, and Exhibit 8, paragraphs A, B, C, and E have been amended to update references to regulatory authority, consolidate guidance concerning ARA, and clarify that ARA offers to pay the debt in full over time are not debt settlements. However, the guidelines in Part 12 will be used to provide the required documentation that the borrower cannot pay the full amount of the debt in a lump sum payment.

Paragraph 25 has been added, and subparagraphs 21 A, 63 A, 101 C, 222 A, 243 B, and paragraph 102 have been amended to update handbook references, consolidate and clarify guidance for handling cases where there is an accepted civil rights claim.

Paragraph 26 has been added and subparagraph 62 B, and Exhibit 12 paragraphs A, B, and C have been amended to update regulatory references, and to consolidate and clarify guidance for pro rata offsets for 7-FLP, parts 3 and 4.

Paragraph 27 has been added and Subparagraph 63 F and Exhibit 13 have been amended to update regulatory references, and to consolidate and clarify guidance for DCIA reviews and appeals.

Subparagraph 101 C and paragraph 131 have been amended to remove references to offset of non-Federal County Office employees as being processed through TOP, and provide updated guidance on processing them according to 22-PM.

**Note:** Offset of non-Federal county office employees is processed under administrative offset and is now limited to 15% of the salary. This is consistent with the percentage offset under Federal salary offset.

Paragraph 102 has been withdrawn.

Subparagraph 106 B has been amended to update a phone number.

Paragraphs 135 through 138 have been added to provide additional guidance and clarification for Federal salary offset, including the provision that after a Federal salary offset hearing, debtors have an additional opportunity to submit an ARA due to FLP adopting 7 CFR part 3.

Subparagraph 241 E has been amended to clarify that local agency officials will continue to use all applicable collection tools such as TOP when collecting through AWG.

Subparagraph 245 D has been amended to clarify that borrower information for AWG cases will be emailed to the LSPMD loan officer assigned to the case.

Paragraph 246 and subparagraphs 242 A and 248 B have been amended to change references to DAFLP to refer to FLP instead.

Subparagraph 352 A has been amended to update guidance and remove FSA regulatory references about priority for internal offset which was removed from the FSA regulations because it is an internal FSA policy.

## **Amendment Transmittal (Continued)**

### **A Reasons for Amendment (Continued)**

Paragraph 354 has been amended to remove subparagraph A and renumber successive subparagraphs.

Subparagraphs 401 A, 402 A and B, 403 A, B, C, D, E, 404 C, 405 A, 405 B and D, 408 A, B, and F, 409 B and E, and Exhibit 34 paragraph 1 have been amended to provide new regulatory references for FLP CONACT debt settlement which was revised and moved from 7 CFR 1956-B to 7 CFR 761-F, and to update guidance where applicable.

Subparagraphs 401 B and C, 403 A, B, C, D, E, and F, 404 A, 405 A, C, and E, 406 A, 407 D, and 408 C have been amended to update paragraph references for debt settlement.

Subparagraph 401 F has been amended to reference paragraph 23 for ARA.

Paragraph 402 has been added as a new paragraph for debt settlement and paragraphs 403 through 409 have been renumbered.

Exhibits 1, 8, 12, 13, 34, 35 and 39 have been amended to update paragraph references.

Exhibit 2 has been amended to:

- Add definitions from:
  - 7 CFR 3.3 for account, administrative charges, administrative offset, Agency, borrower (or debtor), claim and debt, compromise (for FCCS purposes), creditor agency, debt collection center, debt record, discharged debt, disposable pay (for general DCIA purposes), financial statement, fiscal service, non-centralized administrative offset, payee, payment authorizing agency, person, private collection agency, salary offset (for general DCIA purposes), settlement or debt settlement, and withholding of payment
  - 7 CFR 3.52 for withholding order
  - 7 CFR 3.71 for Federal salary offset and waiver
  - 7 CFR 761.2 for alternative repayment agreement, conservation loan, downpayment loan, Economic Emergency loan, feasible plan, good faith, guaranteed loan, hearing official, loss claim, non-essential assets, softwood timber program loan, and soil and water loan
  - 7 CFR 761.402 for third party converter; and add new definitions from 7 CFR 772.2 for individual type Minor Program loans (IMP), and Minor Program
- update definitions for adjustment, cancellation, centralized administrative offset, cross-servicing, debt, debt forgiveness, disposable pay (for Federal salary offset purposes from 7 CFR 3.71), employer, entity, entity member, garnishment, and Treasury Offset Program
- remove definition for Internal Administrative Offset (from 7 CFR 3.3) because it is no longer defined in 7 CFR 3.3.

## Amendment Transmittal (Continued)

### A Reasons for Amendment (Continued)

Exhibit 17 has been amended to update the TOP Quarterly referral dates.

| Page Control Chart |   |  |
|--------------------|---|--|
| TC                 | Text  | Exhibit  |
| 1-4                | 1-1 through 1-4<br>2-1 through 2-4<br>2-5 through 2-12 (add)<br>3-1 through 3-32<br>3-33 (remove)<br>4-1, 4-2<br>4-2.5, 4-2.6 (add)<br>4-9, 4-10<br>5-1 through 5-4<br>5-5<br>5-6 (add)<br>5-7 through 5-14 (add)<br>8-1, 8-2<br>8-2.5, 8-2.6<br>8-5 through 8-8<br>9-1, 9-2<br>9-2.5, 9-2.6 (add)<br>9-3 through 9-8<br>9-9<br>11-1 through 11-4<br>12-1 through 12-32 | 1, pages 1-4<br>2, pages 1-10<br>page 11<br>page 12 (add)<br>pages 13 through 18 (add)<br>page 19 (add)<br>8, pages 1-4<br>page 5<br>page 6 (add)<br>12, pages 1, 2<br>13, pages 1, 2<br>page 3<br>page 4 (add)<br>pages 5, 6 (add)<br>17, page 1<br>page 2 (add)<br>34, pages 1 and 2<br>35, pages 1 and 2<br>39, pages 1 through 6<br>page 7 |

## Table of Contents

### Page No.

#### **Part 1 Introduction and Purpose**

|      |  |     |
|------|--|-----|
| 1    | Purpose and Sources of Authority ..... | 1-1 |
| 2    | Related References.....                | 1-3 |
| 3    | FLP Forms .....                        | 1-4 |
| 4-20 | (Reserved)                             |     |

#### **Part 2 DCIA and FCCS Delinquent Debt Requirements**

|       |  |      |
|-------|--|------|
| 21    | Overview and Authority .....             | 2-1  |
| 22    | Debtor Notification .....                | 2-4  |
| 23    | Alternative Repayment Agreements .....   | 2-5  |
| 24    | No SOL for Offset .....                  | 2-9  |
| 25    | Accepted Discrimination Complaints ..... | 2-10 |
| 26    | Pro Rata Offset - Parts 3 and 4 .....    | 2-11 |
| 27    | Reviews and NAD Appeal .....             | 2-12 |
| 28-60 | (Reserved)                               |      |

#### **Part 3 Internal Administrative Offset**

|        |  |      |
|--------|--|------|
| 61     | Overview and Authority .....                 | 3-1  |
| 62     | Offset Notification .....                    | 3-3  |
| 63     | General Requirements and Due Process .....   | 3-6  |
| 64-80  | (Reserved)                                   |      |
| 81     | Offset Procedures, Reports, Automation ..... | 3-31 |
| 82-100 | (Reserved)                                   |      |

#### **Part 4 TOP**

|         |   |       |
|---------|---|-------|
| 101     | Mandatory Referral and Overview .....       | 4-1   |
| 102     | (Withdrawn--Amend. 9)                       |       |
| 103     | (Withdrawn--Amend. 4)                       |       |
| 104     | TOP Screens and Process.....                | 4-2.5 |
| 105     | County Office Responsibilities .....        | 4-6   |
| 106     | State Office Responsibilities.....          | 4-8   |
| 107     | Handling Debtor Responses to Exhibit 7..... | 4-11  |
| 108-130 | (Reserved)                                  |       |

## Table of Contents (Continued)

|               |  | Page No. |
|---------------|--|----------|
| <b>Part 5</b> | <b>Federal Salary Offset</b>                                       |          |
| 131           | Overview and Authority .....                                       | 5-1      |
| 132           | Coordinating Offset With Another Federal Agency .....              | 5-4      |
| 133           | TOP Referral and Matching Process .....                            | 5-5      |
| 134           | Determination and Notification .....                               | 5-6      |
| 135           | Debtor Response .....  | 5-8      |
| 136           | Hearing and Decision .....   | 5-10     |
| 137           | Offset Process and Collection Requirements .....                   | 5-12     |
| 138           | Refunds .....  | 5-14     |
| 139-160       | (Reserved)   |          |
| <b>Part 6</b> | <b>(Reserved)</b>  |          |
| 161-200       | (Reserved)   |          |
| <b>Part 7</b> | <b>Servicing Unsecured Account Balances and CNC Classification</b> |          |
| 201           | Servicing Requirements for Unsecured Account Balances .....        | 7-1      |
| 202           | CNC Classification .....   | 7-2      |
| 203-220       | (Reserved)   |          |
| <b>Part 8</b> | <b>Cross-Servicing</b>   |          |
| 221           | Mandatory Referral and Overview .....                              | 8-1      |
| 222           | Discrimination Complaints at Cross-Servicing .....                 | 8-2      |
| 223           | Cross-Servicing Process.....                                       | 8-2.5    |
| 224           | FSA Collection Activity .....                                      | 8-5      |
| 225           | CSNG/Artiva.....   | 8-6      |
| 226           | Debt Settlement Offers .....                                       | 8-7      |
| 227-240       | (Reserved)   |          |
| <b>Part 9</b> | <b>AWG</b>   |          |
| 241           | Overview and Authority .....                                       | 9-1      |
| 242           | Required Agency Notification .....                                 | 9-2.6    |
| 243           | Referral to Treasury .....   | 9-3      |
| 244           | Treasury Notification and Borrower Response .....                  | 9-4      |
| 245           | AWG Hearing According to 31 CFR 285.11(f).....                     | 9-5      |
| 246           | Garnishment.....   | 9-8      |
| 247           | Processing Garnishment Amounts and Collections.....                | 9-8      |
| 248           | Changes to Garnishment Amount.....                                 | 9-9      |
| 249-280       | (Reserved)   |          |



## Table of Contents (Continued)

### Page No.

#### Part 10 (Reserved)

281-350 (Reserved)

#### Part 11 Monitoring, Servicing, and Settling Judgment Debts

|         |   |      |
|---------|---|------|
| 351     | Monitoring Judgment Debts .....                             | 11-1 |
| 352     | Servicing FSA Debts That Are Under DOJ's Jurisdiction ..... | 11-2 |
| 353     | Servicing Judgment Debts Returned by DOJ .....              | 11-3 |
| 354     | Debt Settlement of Judgment Debts .....                     | 11-4 |
| 355-400 | (Reserved)  |      |

#### Part 12 Debt Settlement

|     |   |       |
|-----|---|-------|
| 401 | Overview and Authority .....                                    | 12-1  |
| 402 | Determining If The Debt Can Be Settled .....                    | 12-6  |
| 403 | Types of Debt Settlement.....                                   | 12-8  |
| 404 | Cancellation Without Borrower/Debtor Signature (FSA-2731) ..... | 12-13 |
| 405 | Debt Settlement Requested by Borrower/Debtor (FSA-2732) .....   | 12-18 |
| 406 | Review Timeframes and Responsibilities.....                     | 12-21 |
| 407 | Borrower Repayment Ability.....                                 | 12-23 |
| 408 | Approval and Rejection .....                                    | 12-26 |
| 409 | Payments and Servicing - Approved FSA-2732 .....                | 12-30 |

## Table of Contents (Continued)

### Exhibits

|       |  |
|-------|--|
| 1     | Reports, Forms, Abbreviations, and Redelegations of Authority  |
| 2     | Definitions of Terms Used in This Handbook   |
| 3     | (Reserved)   |
| 4     | State Supplements  |
| 5, 6  | (Reserved)   |
| 7     | Example of Due Process Letter to Refer Debt to Treasury for TOP, Cross-Servicing, and AWG  |
| 8     | Reviewing Alternative Repayment Agreements (ARA's)   |
| 9-11  | (Reserved)   |
| 12    | Review and Determination for Pro Rata Offset   |
| 13    | Reconsideration Review, Mediation and NAD Appeal   |
| 14-16 | (Reserved)   |
| 17    | Timeframe for Quarterly Referrals to TOP   |
| 18    | TOP Offset Programmatic Delete Codes   |
| 19    | TOP Offset Manual Online Screen Delete Codes   |
| 20    | TOP Offset Online Screens  |
| 21-28 | (Reserved)   |
| 29    | AWG Reference Guide for LSPMD  |
| 30-33 | (Reserved)   |
| 34    | Approving Debt Settlements Under FCCS  |
| 35    | Optional Guide to Document Asset Search  |
| 36-38 | (Reserved)   |
| 39    | Completed Examples of FSA-2731, Cancellation of Debt Without Application, and FSA-2731A, Cancellation of Debt Without Application (Continuation) |

**Part 1 Introduction and Purpose****1 Purpose and Sources of Authority****A Handbook Purpose**

This handbook is designed to assist FSA in understanding:

- regulations governing:
  - internal administrative offset
  - TOP
  - federal salary offset
  - CNC classification and servicing
  - cross-servicing
  - AWG
  - debt settlement
- roles and responsibilities in implementing regulations and other responsibilities in offset, cross-servicing, and debt settlement.

**B Sources of Authority**

The sources of authority for this handbook include the following for internal administrative offset, Federal salary offset, debt settlement, cross-servicing (including AWG), TOP, and FCCS:

- 7 CFR Part 3
- \* \* \*
- 31 CFR Part 285
- 31 CFR Parts 901 through 904
- various laws and statutes passed by Congress, including CONACT and DCIA.

\* \* \*

## 1 Purpose and Sources of Authority (Continued)

### C Regulation References

Text in this handbook that is published in the CFR is printed in **bold** text. The CFR citation is printed in brackets in front of the text. The references and text:

- are intended to highlight the requirement in the CFR
- may be used to support adverse FSA decisions.

**Note:** Cross-references printed in bold cite a CFR section. The handbook paragraph or subparagraph where the cross-referenced CFR text can be found is printed in nonbold text in parenthesis (within the bold text).

**\*--Example:** [7 CFR 3.30(a)] **Agencies are required by law to transfer delinquent, nontax, legally enforceable debts to Treasury for collection through cross-servicing and through centralized administrative offset ... Rules for transfer to Treasury for centralized administrative offset are specified in subpart D (Part 4) of this part, and for administrative wage garnishment in subpart E (Part 9) of this part.**

**Note:** The text “**subpart D**” and “**subpart E**” refer to subparts in 7 CFR Part 3. The nonbold references indicate the applicable parts in this handbook for centralized administrative offset and administrative wage garnishment.--\*

## 2 Related References

### A Related FSA Handbooks

The following FSA handbooks concern FLP.

| IF the area of concern is about...   | THEN see...                |
|--|----------------------------|
| appeals and mediation  | 1-APP.                     |
| civil rights compliance and administration for FSA programs  | 18-AO.                     |
| common management and operating provisions for program management activities, functions, and automated applications, such as forms that cannot be accepted by FAX  | 1-CM.                      |
| *--direct loan making--*   | 3-FLP.                     |
| direct loan regular or routine servicing   | 4-FLP.                     |
| direct loan servicing – special and inventory property management  | 5-FLP.                     |
| disaster designations  | 1-DIS.                     |
| Emergency Loan Seed Producers Program, Horse Breeder Loan Program, Indian Tribal Land Acquisition Program, Special Apple Loan Program, Land Contract Guarantee Program, and servicing of minor loan programs | 6-FLP.                     |
| employee development and training  | 6-PM.                      |
| environmental requirements   | 1-EQ.                      |
| environmental risk management  | 2-EQ.                      |
| general and administrative regulations governing FLP, and implementing NAD final determinations  | 1-FLP.                     |
| guaranteed loan making and servicing   | 2-FLP.                     |
| personnel management, such as employee conflict of interest  | 3-PM.                      |
| offset procedures and automation   | 3-PL, 58-FI, 63-FI, 64-FI. |
| procedures for collecting, maintaining, or disclosing data or information about an individual  | 3-INFO.                    |
| procedures for making records available to the public, other Federal Agencies, and Congress  | 2-INFO.                    |
| State and county organization and administration policies, procedures, principles, and standards, such as work organization  | 16-AO.                     |
| records management   | 32-AS.                     |

### B Handbook Link

Following are useful links to handbooks:

- <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=empl&topic=hbk>
- <http://inside.fsa.usda.gov/>.

## 2 Related References (Continued)

### C State Supplements

See Exhibit 4 for State supplements required by this handbook. SED's are authorized to issue State supplements to this handbook in addition to State supplements listed in Exhibit 4, according to 1-FLP, subparagraph 2 C.

## 3 FLP Forms

### A Form References

Except as provided in this paragraph, this handbook references forms according to the forms numbering system that became effective December 31, 2007. Forms executed before December 31, 2007, may have a number different from that referenced. See 1-FLP, Exhibit 5 for a comparison of form numbers before and after December 31, 2007.

**Note:** See Exhibit 1 for titles of forms referenced in this handbook.

### B Notary Acknowledgement

\*--See 1-FLP, subparagraph 3 C for guidance on notary acknowledgement for forms.

### C Applicant and Borrower Signatures

See 1-FLP, subparagraph 3 D for guidance on applicant and borrower signatures.

### D State-Modified National Forms

See 1-FLP, subparagraphs 3 E and H for guidance on State-modified national forms.

### E State-Created Forms

See 1-FLP, subparagraphs 3 F and H for guidance on State-created forms.

### F Other Sources of Forms

See 1-FLP, subparagraph 3 G for guidance on other sources of forms.--\*

## 4-20 (Reserved)

**\*--Part 2 DCIA and FCCS Delinquent Debt Requirements****21 Overview and Authority****A Authority**

DCIA and FCCS require Agencies to use various collection tools, including TOP and cross-servicing. These requirements are found in:

- 7 CFR Part 3 for DCIA and FCCS for all USDA Agencies
- 31 CFR Part 285 for DCIA for all Government Agencies
- 31 CFR Parts 900 through 904 for FCCS for all Government Agencies.

**[7 CFR 3.2] Authority. (a) Generally, the regulations in this part are issued under the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (DCIA) (31 U.S.C. 3701, 3711-3720) and the Federal Claims Collection Standards (FCCS) issued pursuant to the DCIA by Treasury and Justice (31 CFR parts 901-904) that prescribe government-wide standards for administrative collection, compromise, suspension, or termination of agency collection action, disclosure of debt information to credit reporting agencies, referral of claims to private collection contractors for resolution, and referral to Justice for litigation to collect debts owed the government. The regulations under this part also are issued under Treasury regulations implementing DCIA (31 CFR part 285) and related statutes and regulations governing the offset of Federal salaries (5 U.S.C. 5512 and 5514; 5 CFR part 550, subpart K) and administrative offset of tax refunds (31 U.S.C. 3720A).**

**(b) With respect to agency specific provisions of this part, the following authorities are applicable:**

...

**(2) The Farm Service Agency (FSA): sections 331, 331A, 331D, and 373 of the Consolidated Farm and Rural Development Act (ConAct) (7 U.S.C. 1981, 1981a, 1981d, and 2008h).**

**[7 CFR 3.1(a)] (3) The regulations in this part do not preclude the Secretary from collection, compromise, suspension, or termination of debts as otherwise authorized by law. In such cases the laws and implementing regulations that are specifically applicable to claims collection activities of a particular agency generally will take precedence over this part.**

**[7 CFR 3.1] (b) USDA agencies may issue regulations to supplement this part in order to meet the specific requirements of individual programs.**

**(c) The regulations of this part will not apply to:**

...

**(4) Actions pursuant to the FSA FLP Debt Settlement regulations (Part 12) in part 761, subpart F of this title are authorized under the Consolidated Farm and Rural Development Act (ConAct) and are independent of the DCIA are excepted from this part.--\***

**\*--21 Overview and Authority Continued)****A Authority (Continued)**

**[7 CFR 761.1] (e) Part 3 of this title and 31 CFR part 285 describe the policies and procedures the Agency will follow for non-centralized offset (including administrative offset) (Part 3) and referral to Treasury for centralized offset (TOP) (Part 4), Federal salary offset (Part 5), Administrative Wage Garnishment (Part 9), and collection through Treasury's private collection agencies (cross-servicing) (Part 8). Supplemental provisions for FLP purposes are described in part 761, subpart F of this title.**

**(f) Part 3 of this title and 31 CFR parts 900-904 describe the policies and procedures the Agency will follow for debt settlement authorities pursuant to the Federal Claims Collection Standards. Supplemental provisions for FLP purposes are described in part 761, subpart F of this title.**

**(g) Part 761, subpart F of this title describes the debt settlement policies and procedures for FLP debt pursuant to the Act (Part 12).**

FSA must coordinate DCIA and FCCS requirements with CONACT requirements when servicing delinquent FLP debt. CONACT requirements are in 5-FLP and referenced where applicable.

The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) revised the offset requirement for FLP borrowers who have program discrimination complaints accepted by the Office of Adjudication. Delinquent accounts involved in an accepted discrimination complaint will be serviced according to 1-FLP, paragraph 25, and subparagraphs 41 I and 41 K.--\*

Borrowers entering the Armed Forces are impacted by the Servicemembers Civil Relief Act of 2003 and the Ronald W. Reagan National Defense Authorization Act for FY 2005. Both Acts affect FSA loan servicing. See 4-FLP, Part 11.



## 21 Overview and Authority Continued)

**B Timing of Collection Actions**

**[7 CFR 3.30(a)] Agencies are required by law to transfer delinquent, nontax, legally enforceable debts to Treasury for collection through cross-servicing and through**  
**\*--centralized administrative offset with the exception of foreign debt that is exempt from cross-servicing per the Debt Collection Improvement Act of 1996. Additionally, USDA will transfer debts to Treasury for collection through administrative wage garnishment. Agencies need not make duplicate referrals to Treasury for all these purposes; a debt may be referred simultaneously for purposes of collection by cross-servicing, centralized administrative offset, and administrative wage garnishment where applicable. However, in some instances a debt exempt from collection via cross-servicing may be subject to collection by centralized administrative offset so simultaneous referrals are not always the norm. This subpart specifies the rules applicable to the transfer of debts to Treasury for collection by cross-servicing. Rules for transfer to Treasury for centralized administrative offset are specified in subpart D (Part 4) of this part, and for administrative wage garnishment in subpart E (Part 9) of this part.--\***

Section 331 D of CONACT requires that borrowers receive loan servicing notification before FSA can take various collection actions.

FLP debt is generally eligible for internal administrative offset and referral to TOP before it is eligible for referral to cross-servicing.

For FLP debt, FSA:

- collects through internal administrative offset as soon as the borrower has received the loan servicing notification package and offset notification

**Note:** Internal offset includes FSA program payments and other payments within USDA, such as NRCS payments.

- refers debt to TOP for centralized administrative offset after debts are certified as eligible according to Part 4

**Note:** This is generally after internal offset is already in place, mainly because of the longer TOP due process timeframe (60 calendar days versus 30 calendar days) and automation requirements involved with referring delinquent debt to Treasury. TOP includes Federal payments, such as Social Security benefits, venter payments, etc. Some State payments are also included because of reciprocal agreements with Treasury. In addition, Federal salary offset is currently administered through TOP.

## 21 Overview and Authority Continued)

### B Timing of Collection Actions (Continued)

- refers debt to cross-servicing after all security is liquidated.

**\*--Notes:** AWG is currently administered through the cross-servicing program.

Federal salary offset is primarily administered through TOP.

For additional collections requirements and regulatory authorities see the following parts.--\*

| IF for...                      | THEN see... |
|--------------------------------|-------------|
| internal administrative offset | Part 3.     |
| TOP                            | Part 4.     |
| Federal salary offset          | Part 5.     |
| cross-servicing                | Part 8.     |
| AWG                            | Part 9.     |

## 22 Debtor Notification

### A Notification

The agency official will inform the debtor as required under 7 CFR 3.11(b). These notifications are included, as applicable, in the following:

- loan servicing notification packages (5-FLP, paragraphs 67 and 68)
- FSA-2701, FSA-2702, FSA-2703, and FSA-2704
- 60-day due process letter (Exhibit 7) to refer delinquent debt to Treasury
- FSA-2710
- FSA-2716 and FSA-2717.

**Note:** Excusing or waiving interest and administrative costs does not apply to FLP loans according to 7 CFR 3.17(g). Interest and penalties on FLP debt are determined by the promissory notes.

\* \* \*

**\*--23 Alternative Repayment Agreements****A Overview**

ARA does not prevent, suspend, or delay any 5-FLP delinquent loan servicing actions or responsibilities. All servicing actions, including but not limited to PLS, debt settlement, acceleration, and foreclosure, continue to be processed.

**Exception:** Foreclosure action may only be suspended after an ARA is approved under subparagraph D

**B For Administrative Offset**

**[7 CFR 3.42(b)] The debtor may, in response to the Notice of Intent to Collect by Administrative Offset, propose to the creditor agency a written agreement to repay the debt as an alternative to administrative offset. Any debtor who wishes to do this must submit a written proposal for repayment of the debt, which must be received by the creditor agency within 30 days of the date of the Notice of Intent to Collect by Administrative Offset or 15 days after the date of a decision adverse to the debtor under subpart F of this part. In response, the creditor agency must notify the debtor in writing whether the proposed agreement is acceptable. In exercising its discretion, the creditor agency must balance the government's interest in collecting the debt against fairness to the debtor. A decision by the agency under this paragraph will not be subject to review under subpart F of this part or by NAD under part 11 of this title. For proposed agreements to pay delinquent amounts owed on FSA FLP loans, the proposed payments in the agreement must cure the delinquency before the next loan installment is due, or within 90 days, whichever is sooner.**

Debtor may submit to FSA. See Exhibit 8 for reviewing ARAs.--\*

**\*--23 Alternative Repayment Agreements (Continued)****C For Federal Salary Offset**

[7 CFR 3.80] Written agreement to repay debts as alternative to salary offset.

(a)(1) The employee may propose, in response to a Notice of Intent to Offset Salary, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt that is received by USDA within 30 days of the date of the Notice of Intent to Offset Salary or 15 days after the date of a hearing decision issued under § 3.78.

(2) For FSA FLP debt, an alternative repayment agreement submitted after a hearing decision must include a payment schedule similar to the payment schedule in the hearing decision and include payment amounts that are at least equal to the payment amounts in the hearing decision.

(b) USDA will notify the employee whether the employee's proposed written agreement for repayment is acceptable. USDA may accept a repayment agreement instead of proceeding by offset. In making this determination, USDA will balance the USDA interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, USDA will accept a repayment agreement, instead of offset, for good cause such as, if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience. For FSA FLP debt, a decision by USDA under this paragraph is not subject to review by NAD under part 11 of this title.

Debtor may submit to FSA. See Exhibit 8 for reviewing ARA's.

**D ARA to Pay FLP Debt in Full Instead of Debt Settlement With Loss to the Agency**

[7 CFR 3.11] (b) In demand letters, the USDA creditor agency will inform the debtor:

...

(4) Of any willingness to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to the agency (see § 3.16);--\*

**\*--23 Alternative Repayment Agreements (Continued)****D ARA to Pay FLP Debt in Full Instead of Debt Settlement With Loss to the Agency (Continued)**

**[7 CFR 3.16] (a) Whenever feasible, agencies will collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, agencies may accept payment in regular installments. Agencies will obtain financial statements from debtors (or a similar statement from foreign debtors) who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible (see 31 CFR 902.2(g) for methods of verification). Agencies that agree to accept payments in regular installments will obtain a legally enforceable written agreement from the debtor that specifies all terms of the arrangement and that contains a provision accelerating the debt in the event of default.**

**(b) The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments will be sufficient in size and frequency to liquidate the debt in 3 years or less.**

**(c) Security for deferred payments will be obtained in appropriate cases. Agencies may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the agency's option.**

**Notes:** The "legally enforceable" written agreements required in 7 CFR 3.16(a) for FLP are FSA-2732 and the underlying promissory notes. Interest continues to accrue according to the promissory notes.

For FLP, acceleration must follow CONACT requirements and be based on the terms of the loan notes, not the terms of the repayment offer. See 5-FLP, Part 15 for acceleration of FLP debt.

If the borrower wants to retain security, or if there is unaccounted for or otherwise missing security, the initial payment must include the total value of all security, minus any prior liens. Missing and unaccounted for security can be documented on FSA-2732, Part D, Item 2.

FSA will retain liens on all security until the ARA is paid in full. FSA's lien position may be subordinated, or release and refile approved by SED or FLC under 4-FLP, Part 6, Section 2, for the borrower to obtain funds to finance the offer needed to retain security.

**Note:** The requirements of 4-FLP, subparagraph 117 A (3) (iii) and (viii) may be waived for subordinations or release and refiles completed under this paragraph.

FSA-2732 and other forms and information, as needed and applicable to the case, will be used to document the debtor's inability to pay the debt in one lump sum. See subparagraph 401 F.--\*

**\*--23 Alternative Repayment Agreements (Continued)**

**D ARA to Pay FLP Debt in Full Instead of Debt Settlement With Loss to the Agency (Continued)**

The agreement should not:

- have unequal payments, unless the need for them can be documented, such as a pending sales contract on a non-security property
- include a large balloon type payment at the end of the agreement
- exceed 3 years, if possible.

**Note:** SED may approve ARAs to pay the debt in full with repayment terms of up to 5 years.

A debtor's failure to pay according to the agreement will be handled according to subparagraph 409 B.

When accounts have been referred to Treasury for cross-servicing (which includes AWG), debtors must submit ARA and other payment arrangement requests to Treasury.

See Exhibit 8 for actions to take if:

- a cross-servicing debtor submits a request to FSA instead of Treasury
- Treasury requests FLP concurrence or FLP review of a request that Treasury received.--\*

**24 No SOL for Offset**

**A Nonjudgement and Judgement Debt**

There is no SOL for offset of nontax debt, pursuant to 31 U.S.C. 3716.

**B Judgement Lien Certification**

There is a 20-year SOL for offset on a judgement lien, with the option of a one-time renewal for 20 additional years when proper notice of renewal has been filed, pursuant to 28 U.S.C. 3201.

However, offset collection of judgment debt pursuant to 31 U.S.C. 3716 is not tied to the SOL for the lien.

28 U.S.C. 3003(b) provides additional guidance about offsets in relation to other Federal and State laws.

See paragraph 353 for additional information about collecting and servicing judgement debt.

**\*--25 Accepted Discrimination Complaints**

**A Servicing Requirements**

Delinquent accounts involved in an accepted discrimination complaint will be serviced according to 1-FLP, subparagraphs 41 I and 41 K.

Accounts that have no security remaining, which have been accelerated or where all loans are mature, such as those classified CNC, will continue to accrue interest and be subject to administrative offset, including TOP.

CNC accounts involved in a discrimination complaint are not eligible for cross-servicing.

**B Questions**

For questions about accepted complaints, state Offices may contact LSPMD by telephone at 202-720-1984 or by e-mail at **SM.FSA.DCWa2.DirectLoans** or **fsa-directloans@usda.gov**.--\*



**\*--26 Pro Rata Offset - Parts 3 and 4****A Authority**

**[7 CFR 3.45] (a) A USDA payment authorizing agency, to satisfy either a non-centralized (Part 3) or centralized (Part 4) administrative offset under §§ 3.43 and 3.44, may offset:**

**(1) A debtor's pro rata share of USDA payments due any entity in which the debtor participates, either directly or indirectly, as determined by the creditor agency or the payment authorizing agency or:**

**(2) USDA payments due any entity that the debtor has established, or reorganized, transferred ownership of, or changed in some other manner the operation of, for the purpose of avoiding payment on the claim or debt, as determined by the creditor agency or the payment authorizing agency.**

**(b) Prior to exercising the authority of this section to offset any portion of a payment due an entity, the creditor agency must have provided notice to that entity in accordance with § 3.41 of its intent to offset payments to the entity in satisfaction of the debt of an individual debtor participating in that entity.**

**B Review and Notice Required**

See paragraph 62 for notice requirements and Exhibit 12 for review items to assist in determining if pro rata offset will be pursued.--\*

**\*--27 Reviews and NAD Appeal****A Authority**

**[7 CFR 3.42(c)] A debtor must request an administrative review of the debt under subpart F of this part within 30 days of the date of the Notice of Intent to Collect by Administrative Offset for purposes of a proposed collection by non-centralized administrative offset (Part 3) and within 60 days of the date of the Notice of Intent to Collect by Administrative Offset for purposes of a proposed collection by referral to Treasury for centralized offset (Part 4) against other Federal payments that would include tax refunds.**

**[7 CFR Part 3] Subpart F—Administrative Reviews for Administrative Offset, Administrative Wage Garnishment, and Disclosure to Credit Reporting Agencies  
§ 3.60 Applicability.**

**(a) This section establishes consolidated administrative review procedures for debts subject to administrative offset (Parts 3 and 4) , administrative wage garnishment (Part 9), and disclosure to credit reporting agencies, under subparts D (Parts 3 and 4) and E (Part 9) of this part. A hearing or review under this section will satisfy the required opportunity for administrative review by the agency of the determination of a debt for both administrative offset and administrative wage garnishment that is required before transfer to Treasury for collection (Part 4) or collection by the agency through non-centralized administrative offset (Part 3).**

**(b) For debt collection proceedings initiated by FSA, CCC, FCIC, the Rural Housing Service, the Rural Business-Cooperative Service, the Risk Management Agency, the Natural Resources Conservation Service, Rural Development, and the Rural Utilities Service (but not for programs authorized by the Rural Electrification Act of 1936 or the Rural Telephone Bank Act, 7 U.S.C. 901-950cc-2), part 11 of this title (Handbook 1-APP) will be applicable and not the provisions of this subpart.**

For non-centralized administrative offset (Part 3) see Exhibit 13 and 1-APP.

For TOP (Part 4) see paragraph 107.--\*

**28-60 (Reserved)**

## Part 3 Internal Administrative Offset

### 61 Overview and Authority

#### A General

Administrative offset is required by DCIA. FSA uses noncentralized internal administrative offset (this Part) within USDA, and centralized offset through TOP (Part 4).

**[7 CFR 3.43(a)] ... a creditor agency may make a request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt... \* \* \***

**\*--[7 CFR 3.43(d)] Payment authorizing agencies will comply with offset requests by--\* creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the program of the payment authorizing agency or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.**

Any FSA payments or commodity loans due to a borrower will be offset for the collection of a delinquent debt owed to FSA, with the following exceptions:

- the initial payment for planting expenses under CRP
- loan funds from FLP loans or other Federal loan programs
- CAT indemnity payments.

#### B Authority

**\*--Collections of delinquent debts through administrative offset will be taken in accordance with 7 CFR part 3, subpart D and this handbook.--\***

**61 Overview and Authority (Continued)****C State Office Responsibility**

SED's will ensure that:

- no FSA payments including CRP (except for the initial payment for planting expenses), PFC, LDP, market loan payments, EQIP, LIP, SIP, ECP payments, any other disbursements, and commodity loans are made to a producer who is also 90 calendar days past due on an FLP debt
- authorized FSA employees are correctly sending the offset notices according to paragraph 62 and Exhibit 12, and updating, maintaining, and monitoring delinquent debt and eligibility information:
  - in the web-based subsidiary system according to 64-FI and 3-PL
  - in FSAFS according to 58-FI, paragraphs 160, 161, 404, and 405 and 63-FI, Part 5.

**D DD's Responsibility**

DD's will ensure that:

- offset notification lists in subparagraph 81 B are updated monthly
- the lists are provided to all County Offices where the borrower farms
- delinquent FLP debt has been recorded in the web-based subsidiary files, using "FSA Debt" as the "Source of Delinquent Debt Determination", according to 64-FI, \*--paragraph 91 and 3-PL (Rev. 2), paragraph 33
- the "Other Agency Claim" flag is set in Financial Services, Customer Profile and NPS, according to 64-FI, paragraph 91--\*
- information on FLP delinquent debt is updated timely and accurately in FSAFS according to 63-FI, Part 5
- applicable program payments are offset, and the offset monies are properly credited to delinquent FSA debts.

## 62 Offset Notification

**A When 90 Calendar Days Delinquent**

**\*--[7 CFR 3.41(c)] The Notice of Intent to Collect by Administrative Offset will be included as part of a demand letter issued under §3.11 (paragraph 21) to advise the debtor of all debt collection possibilities that the agency may employ.**

The authorized agency official will send the following by certified mail:

- FSA-2701 and FSA-2707 to each borrower who is 90 calendar days past due

**Notes:** The offset notice will be sent in the same envelope with the loan servicing notification package. The notices will be placed back to back with a blank sheet of bold colored paper in between.

If the borrower was previously sent PLS notices for nonmonetary default, or is actively being serviced as 90 calendar days past due, a new PLS notice will not be reissued. If not sending a new PLS notice; FSA-2707, FSA-2037, and FSA-2038 should be included with FSA-2701.--\*

- FSA-2702 to each nonborrower entity as required.

If the certified mail is not accepted by the borrower or borrower entity, the authorized agency official will ensure that the:

- envelope is placed in the borrower's case file
- documents from the certified mail package are sent to the last known address by first-class mail.

**B Notice Requirements for Offset of Payments to Entities Related to Debtors**

If the debtor will receive all, or part, of a payment because of participation in an entity, the authorized agency official will consult the Regional OGC, as needed, to determine whether FSA has a legally enforceable right under State or Federal law, including common law, to pursue payment from the entity.

**\*--Collection of delinquent debts through administrative offset may be taken against a debtor's pro rata share of payments due any entity in which the borrower participates according to 7 CFR 3.45 and paragraph 26.**

See Exhibit 12 for additional information about the following:

- determining debtor's participation in an entity
- review items for consultation with Regional OGC.--\*

## 62 Offset Notification (Continued)

**B Notice Requirements for Offset of Payments to Entities Related to Debtors (Continued)**

The FBP will document the basis of FSA's right to pursue the entity payment.

Collection of delinquent debts through administrative offset may be taken against a debtor's pro rata share of payments due any entity in which the borrower participates.

Notice will be given to nonborrower entities subject to pro rata offset where practicable to do so. Written concurrence from the State Office must be obtained if it is not practicable to notify nonborrowers. The borrower's file must be documented accordingly.

Notices to nonborrower entities should be sent at the same time as notices to borrowers. The entity notice should contain no specific debtor information other than sufficient information to identify the debtor (usually the name is sufficient) and the amount of the debtor's deficiency.

Appeal rights to NAD will be provided so the entity has an opportunity to challenge the extent of the debtor's interest in the nondebtor entity.

**Note:** Notice shall be mailed to any person who is authorized by State law to receive service on behalf of the entity. For example, in most States notice provided to the registered agent is sufficient notice for a corporation. Each State should consult their respective Regional OGC to determine what notice is sufficient for the entity involved.

**C When Insufficient Time for Prior Notice and Opportunity to Review**

**\*--[7 CFR 3.41(b)(3)] ...when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. ...the agency will give the debtor such notice and an opportunity for review as soon as practicable--\* and will promptly refund any money ultimately found not to have been owed to the government.**

In cases where the notice in subparagraph A was sent, and a farm program payment is scheduled to be paid before the time periods for review and appeal in connection with the notice have expired, the authorized agency official will determine whether failure to offset the payment would substantially prejudice the Government's ability to collect the debt, such as where possible insolvency of the debtor might encourage competition among creditors for funds.

**62 Offset Notification (Continued)****C When Insufficient Time for Prior Notice and Opportunity to Review (Continued)**

If the payment should be offset, the authorized agency official will:

- request concurrence from SED to send FSA-2703 (borrower) and/or FSA-2704 (nonborrower entity)
- insert the reasons for taking immediate offset on FSA-2703 and FSA-2704

**Note:** Examples might include:

- loans are seriously undersecured
- loans are seriously delinquent with little attempt to make payments
- the borrower has a history of unauthorized disposition of security
- the borrower has a history of paying unsecured accounts or junior lienholders first and failure to collect the payments would result in additional financial losses to the Government.
- attach FSA-2701 when mailing FSA-2703
- attach FSA-2702 when mailing FSA-2704
- send the forms by certified mail.

**Note:** Offset is prohibited until an FLP loan is 90 calendar days past due.

**D Timeframes**

Timeframes will commence from the date certified mail is accepted by the borrower, or 3 calendar days following the date of first-class mailing.

Offset will begin for:

- \*--FSA-2701 and FSA-2702 on the 31st calendar day, or when a stay of offset expires according to paragraph 63
- FSA-2703 and FSA-2704 immediately.--\*

## 63 General Requirements and Due Process

### A Feasibility

SED will work with OGC to obtain a written determination in cases where it is not feasible to use offset. Determinations will consider legal impediments to administrative offset, such as the 1-action rule in a State where pursuing offset could jeopardize FSA's ability to foreclose on the security, contract provisions, or degree of certainty as to the factual basis (other than the debt amount) of the Government's claim.

\*--Determinations concerning legal impediments, such as an accepted discrimination complaint and relevant communications with the Regional OGC and/or DOJ, should be documented in the borrower's case file.

For accepted discrimination complaints, see paragraph 25.

### B Resolving the Delinquency

To prevent administrative offset, the borrower must:

- pay the account current or in full
- submit a proposed ARA that is approved by SED

**Note:** See subparagraph 23 B and Exhibit 8.

- submit a debt settlement offer on FSA-2732 that is approved by SED

**Note:** FSA-2732 **must** be processed timely according to paragraph 406.--\*

### C Stays

Offset can be stayed when a debtor requests FSA review according to Exhibit 13 or FSA accepts ARA. Stay will not be granted when:

- PLS has begun and is not concluded
- FSA determines that a situation exists that requires proceeding with offset
- a debtor appeals to NAD.

If offset collections are later determined not to be subject to offset, they will be promptly paid to the debtor.



**63 General Requirements and Due Process (Continued)****D Inspect and Copy Records**

**[7 CFR 3.42(a)] A debtor who intends to inspect or copy agency or USDA records with respect to the debt must notify the creditor agency in writing within 30 days of the date of the Notice of Intent to Collect by Administrative Offset. In response, the agency must notify the debtor of the location, time, and any other conditions, consistent with part 1, subpart A, of this title, for inspecting and copying, and that the debtor may be liable for reasonable copying expenses. A decision by the agency under this paragraph**  
**\*--will not be subject to review under subpart F of this part or by NAD under part 11 of this title (1-APP).--\***

See 2-INFO if a debtor requests a copy of their file or records. FSA will pay copying costs for 1 copy. If a debtor requests to inspect or copy FSA records after the 30-calendar-day timeframe, access will be provided; however, no stay of administrative offset will occur. See 3-INFO:

- paragraph 17 for records holding office responsibility
- paragraph 20 for legal basis for withholding information.

**E ARA**

**\*--See subparagraph 23 B for regulatory authority and requirements, and Exhibit 8 for reviewing an ARA request.**

**F Review and Appeal**

See paragraph 27 for regulatory authority and requirements, and Exhibit 13 and 1-APP for FSA review process and NAD appeal.--\*

**64-80 (Reserved)**



**\*--81 Offset Procedures, Reports, Automation****A Timing of Offset**

**[7 CFR 3.43 (b)] A non-centralized administrative offset may start 31 days after the date of the Notice of Intent to Collect by Administrative Offset, any time after the final determination in an administrative review conducted under subpart F of this part upholds the creditor agency's decision to offset, or any time after the creditor agency notifies the debtor that its repayment proposal submitted under § 3.42(b) (subparagraph 23 B) is not acceptable if the 30-day period for the debtor to request review of the Notice has expired, unless the creditor agency makes a determination under § 3.41(b)(3) (subparagraph 62 C) that immediate action to effectuate the offset is necessary.**

**B Requesting Offset**

**[7 CFR 3.43(c)] A payment authorizing agency may conduct a non-centralized administrative offset only after certification by a creditor agency that:**

**(1) The debtor has been provided notice and opportunity for review as specified--\* in §3.41; (paragraph 62) and**

**(2) The payment authorizing agency has received written certification from the creditor agency that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the creditor agency has fully complied with its regulations concerning administrative offset.**

After the expiration of stays or the conclusion of applicable reviews, the authorized agency official will notify the State Office of borrowers who are subject to offset, including individually liable members of entities and nonborrower entities.

As long as the account remains in default subsequent notice is not required to notify the State Office to continue offset.

**81 Offset Procedures, Reports, Automation (Continued)****C Continuation of Offset**

**[7 CFR 3.41(b)(4)] ... With respect to loans paid on an installment basis, notice and opportunity to review under this part may only be provided once for the life of the loan upon the occurrence of the first delinquent installment. ... Any interest accrued or any installments coming due after the offset is initiated also would not require a new notice and opportunity to review.**

Once offset collection is in place, it continues until the account is brought current, paid in full, not eligible for offset (such as during certain bankruptcy proceedings, etc.), or otherwise resolved.

If the account is brought current, any subsequent delinquency requires new notification of FSA's intent to collect the delinquency through offset.

**D Offset Collections**

Collections received through offset will be processed as regular payments and credited to the delinquent debts. Payments will have an application code "A".

If the debtor owes more than 1 type of FSA debt, the priority of the delinquent FSA debts to be paid from offset collections will be according to 58-FI and 4-FLP.

**E Refunds**

Refunds of amounts offset, plus interest, will be made within 45 calendar days if FSA determines an amount should not have been offset or that the debtor has prevailed in an administrative appeal.

The 90-calendar-day Treasury bill rate will be used to calculate interest payable to the debtor.

**\*--Note:** See 64-FI, Part 5, for processing FLP refunds through NRRS.--\*

## Part 4 TOP

**\*--101 Mandatory Referral and Overview****A Authority**

The Debt Collection Act, as amended by DCIA, requires that delinquent debtors be referred to TOP for administrative offset of Federal and some State Government payments. The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) revised the offset requirement for FLP borrowers who have program discrimination complaints accepted by the Office of Adjudication.

**[7 CFR 3.44] (a)(1) Except as provided in paragraph (a)(2) of this section, after the notice and review opportunity requirements of § 3.41 (paragraph 62 and Exhibit 7) are met, an agency will refer debts which are over 120 days delinquent to Fiscal Service for collection through centralized administrative TOP 61 days after the date of the Notice of Intent to Collect by Administrative Offset provided in accordance with § 3.41. If the debtor requests review under subpart F of this part, referral of the debt must occur within 30 days of the final decision upholding the agency decision to offset the debt if the debt is more than 120 days delinquent.**

**(2) For FSA FLP and Rural Development debt:**

**(i) The delinquent loan servicing procedures and timeframes required by the ConAct will be followed; and.**

**(ii) Offsets will not occur during any moratorium required by the ConAct.**

**(b) After the notice and review opportunity requirements of § 3.41 are met, and administrative review under subpart F of this part is not sought or is unsuccessful on the part of the debtor, an agency may refer a debt that is less than 120 days delinquent.**

**(c) Agencies will refer debts to Treasury for collection in accordance with Treasury procedures specified in 31 CFR 285.5.**

FSA FLP debt is not referred to TOP based on the “more than 120 days delinquent” criteria.

FLP debt is referred to TOP after the required CONACT delinquent loan servicing notices have been sent and all other due process notifications and processes have been completed.--\*

**\*--101 Mandatory Referral and Overview (Continued)****B Overview**

This part provides guidance on:

- the 2-step process required to certify FSA direct FLP delinquent borrower/co-borrower debts to Treasury for offset on an ongoing, quarterly basis, see paragraph 104
- determining eligibility for referring borrower/co-borrower debts to Treasury for TOP offset, see subparagraph 104 C
- refunding co-borrower TOP offsets, see subparagraph 104 E
- instructions for updating co-borrowers/related entities in the DLS Customer Profile, see subparagraph 104 B
- instructions for deleting (see subparagraphs 104 C and 106 D and Exhibits 18 and 19):
  - borrowers/co-borrowers on TOP offset update screens
  - bankruptcy cases.

**C Accepted Discrimination Complaints**

See paragraph 25. In cases where loans are not eligible for TOP, according to paragraph 25, use delete code “11” to remove them from the TOP Offset Screens.--\*

**102 (Withdrawn--Amend. 9)**

**103 (Withdrawn--Amend. 4)**

**104 TOP Screens and Process****A Co-Borrower Selection and Changes**

Co-borrower information for TOP is selected from the DLS Customer Profile. In DLS, co-borrowers are considered related entities. To link, view, update, and unlink related entities through the loan making process, follow the procedure in the DLS User's Guide, Part 4. To view, create, and update related entity information through the loan servicing process, follow the procedure in the DLS User's Guide, Section 8.3.5.

The guide may be found on the FLP Software User Guides web page located at <https://inside.fsa.usda.gov/program-areas/daflp/software-manuals/index>.

**B TOP Weekly Update**

All loans on the Borrowers Eligible for TOP Offset Certified Screen will be available for review and manual deletion on an ongoing weekly basis. DCIB and State Offices have delete capability; County Offices and FaSB have view capability. State Offices are responsible for processing all deletes. The monthly RC 540 and its parts will be used to programmatically update or delete certified borrower/co-borrower loan information at TOP each weekend. The screens will be taken down by 2:30 p.m. c.t. on Fridays and made available on Tuesdays.

Send FSA-2723 to the State Office to request "TOP delete only".

Send FSA-2722 to NFAOC through the State Office and check Box 4B for TOP delete when also requesting a recall from cross-servicing, TOP refund, cross-servicing refund, and/or reporting a change/update to information previously submitted on FSA-2721.

The State Office will delete the applicable loans from TOP before sending FSA-2722 to NFAOC.

**C Debtors Displayed on Borrowers Eligible for TOP Offset Screens**

The monthly RC 540 and its parts will be used on an ongoing basis to select and update delinquent loans eligible for offset. The TOP Selection process is usually run the last 2 weeks of the quarter. The screens will be made available to State and County Offices according to the timeframe in Exhibit 17.





## 104 TOP Screens and Process (Continued)

**C Debtors Displayed on Borrowers Eligible for TOP Offset Screens (Continued)**

The screens will be displayed with all delinquent loans for:

- borrowers/co-borrowers who are not at TOP and fall into 1 or more of the following categories:
  - 90 calendar days past due
  - at least \$25 delinquent
  - **not** flagged “BAP”
  - **not** a boll weevil loan
  - **not** flagged “SAA”

**Notes:** Loans listed will include Apple loans, Bureau of Reclamation loans, and debts classified CNC.

Borrowers on full-time active duty in the Armed Forces are not eligible for TOP. See 4-FLP, Part 11 for guidance on servicing borrowers on full-time active duty.

- debtors/co-debtors who have:
  - employee defalcations
  - judgments **not** currently certified
  - delinquent equity receivables or loan suspensions
  - delinquent leases
  - TPJ’s, both borrower and third parties, if they are in SCIMS and linked as related entities in the DLS Customer Profile
  - filed bankruptcy, but have not been flagged “BAP”.

**\*--Note:** An automatic stay only affects debtors who are named in the bankruptcy filing.

**Example:** In Chapter 12 cases, 11 U.S.C 1201 provides that co-debtors are protected from collection efforts such as offset. However, this co-debtor stay only applies to “consumer debts.” FSA debt is not consumer debt because it is made for business/farming purposes. Co-debtors who are not named in the bankruptcy filing should not be removed from offset.--\*

To prevent selection for TOP when a borrower/co-borrower is no longer eligible for TOP, such as individual bankruptcy, release from liability, deceased, etc., users must:

- delete the loan on TOP screens with the appropriate code
- unlink the co-borrower as a related entity in the DLS Customer Profile.

**104 TOP Screens and Process (Continued)****C Debtors Displayed on Borrowers Eligible for TOP Offset Screens (Continued)**

If a co-borrower later becomes eligible for TOP, such as when a bankruptcy is dismissed, remove or change the “BAP” flag, and/or link the co-borrower as a related entity, as appropriate.

Loans will be selected each quarter, even if manually deleted in a prior quarter, if the loan continues to appear delinquent on ADPS and no circumstance would generate a programmatic delete. Specific examples are ineligible judgment loans, SAA loans, loans involved in bankruptcy with no “BAP” or “SAA” flag on the account, and loans related to a settlement agreement or a problem case being worked by NFAOC where ADPS transactions have not been processed. See Exhibits 18 and 19 for descriptions of programmatic delete codes and the manual delete codes available for State Office use.

To accommodate TOP selection for TPJ loans, the third party’s name, address, and TIN must be entered in SCIMS. Ensure that the third party is not already in SCIMS before attempting to add them. The third party must also be linked as a related entity in the DLS Customer Profile. Select “co-borrower” as the type of related entity. The TOP selection process will bring in all loans. The loans for the primary borrower and any original co-borrowers should be deleted, if appropriate. This will leave only the third party’s debt in TOP.

Borrowers who have requested loan servicing or debt settlement are eligible for offset until the loans have been brought current through payment or restructure, or a settlement or repayment plan has been approved by FSA.

Salary offset collections for delinquent debtors are being handled by Treasury through the TOP offset process. These payments will be biweekly and have a “T” application code.

**D State Tax Refunds and State Vendor Payments Included in TOP Centralized Offset**

DCIA contains a provision that allows the State to enter into reciprocal agreements with Treasury to collect unpaid State debt by offset of Federal nontax payments and the Federal Government to collect delinquent nontax debt by offset of State payments.

The 60-day TOP Due Process Notification Letter (Exhibit 7) was modified to include State payments.

**104 TOP Screens and Process (Continued)****E TOP Refunds**

\*--FAX FSA-2722 to DCIB at the ECM FAX number in 1-FLP, subparagraph 5 D, only if a--\* refund is needed, or the loan needs to be recalled from cross-servicing.

**Note:** FSA-2722 is only to be used for TOP and cross-servicing refunds and cross-servicing recalls. If FSA-2722 is used for an internal administrative offset or regular payment refund request, processing of the refund may be delayed.

Refunds must be made to the specific person who was offset. DCIB will determine whether the refund will be manual or programmatic. The refund will be programmatic if the person receiving the refund is in ADPS and no other name will be on the check. Full refunds will include the TOP fee amount. Partial refunds will not include the TOP fee amount.

The following information must be provided on FSA-2722, item 16B, if a check must be sent to other than the County Offices:

- name of the person or persons to whom the check should be made payable
- address where the check should be mailed

**Note:** Manual refunds may be sent directly to the borrower's/co-borrower's address; however, this is discouraged because the County Office then has no confirmation the refund was received. It is critical to specify where the check must be sent.

- effective date the borrower/co-borrower was no longer eligible for offset (the date of bankruptcy filing, date paid current, repayment agreement date, etc.) and which person was involved.

**Note:** To ensure timely and accurate processing of refund requests, all FSA-2722 refund requests must be FAXed to DCIB only \* \* \*, not to FaSB. DCIB monitors and tracks all refunds.

**104 TOP Screens and Process (Continued)****E TOP Refunds (Continued)**

When completing FSA-2722 for a borrower/co-borrower who has a monthly offset occurring or the amount of the offset is unknown and the offset needs to be refunded, enter the following:

- in item 13, the amount of the offset in ADPS Online History, which is the amount of the offset taken by Treasury minus any TOP and/or salary offset fees
- in item 16B, the date specified should be the date the loan was no longer eligible for offset, such as the bankruptcy filing date, date SED signed the settlement agreement, etc.

**Note:** It is not necessary to wait to FAX FSA-2722 until the offset appears on ADPS. However, FSA-2722's will be held by \* \* \* DCIB until the payment arrives and is applied to the loan. This usually takes 2 to 3 weeks from the date of offset.

**105 County Office Responsibilities****A Screening**

On an ongoing basis, County Offices will be provided view-only access to the TOP Offset Online Screens. Since County Offices do not have the authority to delete loans on the TOP Offset Online Screens, County Offices must:

- review the Borrowers Eligible for TOP Offset Screens and determine whether each debtor shown is eligible to receive a 60-day TOP Due Process Notification Letter, or is being referred to TOP for offset

**Note:** It is critical that borrowers/co-borrowers on this screen are reviewed for TOP due process notification eligibility.

- review the Borrowers Eligible for TOP Offset Certified Screens on an ongoing basis to determine whether any loans need to be removed from TOP

## 105 County Office Responsibilities (Continued)

### A Screening (Continued)

- review Exhibit 18 for delete codes that will be programmatically generated based on the ADPS status of the debtor's account

**Note:** No County Office action is needed for debtors who meet the delete code criteria in Exhibit 18.

- FAX all FSA-2722 and supporting documentation to the State Office, if a loan needs to be deleted, recalled from cross-servicing, or an offset payment needs to be refunded based on criteria in Exhibit 18 or 19
- \*--send FSA-2723 to the State Office instead of FSA-2722, when only requesting TOP delete--\*
- verify the accuracy of any flags on the debtor's account and correct, if necessary
- remove ineligible co-borrowers from TOP eligibility by updating/unlinking them in the DLS Customer Profile.

**Note:** This action will keep borrowers from being selected in subsequent quarters, but will not programmatically delete the loan from TOP Offset Online Screens. They must still be deleted by the State Office in the current quarter, using the applicable codes.

### B Accessing Borrower/Co-Borrower Accounts

County Offices can view borrower/co-borrower loans in ADPS, on the TOP Offset Online Screens according to Exhibit 20.

For debtors whose files are being handled in another office, contact that office for a determination of eligibility.

If the County Office is unable to access any borrowers/co-borrowers and the authorized agency servicing official is aware that there should be debtors on the screens, contact the State Office.

On an ongoing basis, State Offices will be provided access to both of the TOP Offset Online Screens. The responsibility for deleting loans now rests with the State Office; however, the screening process is the responsibility of both the State and County Offices.

**106 State Office Responsibilities****A TOP Certification**

At the end of each quarter, the TOP Offset Online Screens will be taken out-of-service and all debts not deleted on the Borrowers Eligible for TOP Offset Screen will be certified to Treasury for offset. The Borrowers Certified for Treasury Offset Report will be mailed to State and County Offices within 2 weeks after certification. Borrowers/co-borrowers displayed on this report will be moved to the Borrowers Eligible for TOP Offset/Certification Screen for weekly update capability.

See Exhibit 17 for a tentative timeframe for the quarterly referral process. If changes to the timeframe are needed, a message will be:

- displayed on the ADPS Message Screen
- e-mailed to TOP Coordinators in each State Office.

**B Screening**

Delete codes cannot be changed or removed at any time. Loans deleted in error will be picked up for screening in the next selection process. See Exhibit 17 for deadlines for entering delete codes.

**Note:** Delete codes should be entered during the pre-certification screening process.

State Offices will enter a delete code for each loan that is ineligible, based on criteria in Exhibit 19. **Do not use codes that are not included in Exhibit 18 or 19.** Delete code information is tracked and used for quarterly Congressional reporting.

**Note:** No State Office action is needed for debtors who meet the delete code criteria in Exhibit 18, unless there is a suspend code on an account (“ZSPC” on the ADPS AI Screen). A suspend code will prevent a TOP borrower/co-borrower from being deleted programmatically, even if there is a fully paid code on the loan.

State Offices that transfer loans to a spouse must correct the borrower/co-borrower related entity information in DLS Customer Profile.

**106 State Office Responsibilities (Continued)****B Screening (Continued)**

Judgment loans must be carefully reviewed before determining TOP eligibility. DOJ is responsible for referring debts to TOP when DOJ has jurisdiction. In some cases, DOJ may request that FSA refer debts on DOJ's behalf. Do **not** refer a judgment under DOJ \*--jurisdiction **without** contacting LSPMD at 202-720-1984. If the loan needs to be deleted,--\* use delete code "05".

"CAP" and "FAP" flagged loans are included on the TOP Offset Online Screens. The presence of 1 of these flags on the account is not a determining factor for whether a debtor should be deleted. Review the debtor file to determine eligibility as follows:

- "CAP" flagged accounts should be deleted with code "03" only if the debt is being handled by OGC
- "FAP" flagged accounts should be deleted with code "01" only if offset could jeopardize litigation under State law.

CNC loans must be carefully reviewed before determining TOP eligibility.

If any nonjudgment loan becomes ineligible, input the proper delete code and notify DCIB immediately by FAXing FSA-2722 to the ECM FAX number in 1-FLP, subparagraph 5 D.

**C Accessing Debtor/Co-Debtor Accounts**

State Offices:

- will have online capability to delete loans serviced by their County Offices
- may access the TOP Offset Online Screens as described in Exhibit 20.

## 106 State Office Responsibilities (Continued)

**D Deleting Debtors/Co-Debtors**

After accessing debtors through the Borrowers Selection Menu, options “1”, “2”, “3”, or “4”, delete a loan and any cost item related to the loan according to the following table, if ineligible for offset.

| Step | Action  |
|------|---|
| 1    | <p>On the Borrowers Selection Menu, for options:</p> <ul style="list-style-type: none"> <li>“1” and “2”, input all delete codes needed for all borrower/co-borrower loans displayed on the page before pressing “Enter”</li> </ul> <p><b>Note:</b> Borrowers and co-borrowers are not necessarily eligible for deletion for the same reason or at the same time.</p> <ul style="list-style-type: none"> <li>“3” and “4”, input the applicable delete code from Exhibit 19 in the “DLT CDE” field on the line for the loan number to be deleted.</li> </ul> <p><b>Note:</b> If all of a borrower’s/co-borrower’s loans are to be deleted, input a delete code for each loan.</p> |
| 2    | <p>PRESS “Enter”.</p> <p><b>Note:</b> Users must PRESS “Enter” for each page, if a delete code has been entered. If users PRESS “PF8” or “PF7” without pressing “Enter” first, the delete code will not be processed.</p> <p>Once users PRESS “Enter”, “Borrower(s) Processed” will be displayed on the bottom-left of the screen. The current date will be displayed in the “Delete Date” column in the center of the screen. To verify the delete codes have processed, ENTER “5” to return to the Subsystem Selection Menu, and PRESS “Enter” again. The delete codes will be displayed in the loan line under the “Delete Code” column, on the left.</p>                    |
| 3    | <p>Continue this process for all pages displayed for the requested State or County Office or for the requested debtor.</p>  |



**\*--107 Handling Debtor Responses to Exhibit 7**

**A Inspect and Copy Records**

See subparagraph 63 D.

**B ARA**

ARA's will be considered according to Exhibit 8.

**C Debt Settlement**

See Part 12.

**D Review**

Do **not** use Exhibit 13 for this review. Debtors were provided an opportunity for review according to Exhibit 13 and NAD appeal, when they received FSA-2701 and/or FSA 2702.

FSA is required to include in Exhibit 7, a statutory 60-day timeframe to request review before referring debts to TOP.

The review, in response to Exhibit 7, is a review of "the validity of the delinquent debt amount".--\*

**\*--107 Handling Debtor Responses to Exhibit 7 (Continued)**

**D Review (Continued)**

SED designee shall:

- review the information and documentation submitted by the debtor
- determine if the information submitted by the debtor indicates that the outstanding balance or amount delinquent needs to be corrected in FSA's records/automated financial system, and/or if the debt is otherwise currently not eligible for TOP
- provide a written response to the borrower.

If the account needs to be corrected, and/or if the debt is otherwise not eligible for TOP, State Office shall:

- provide the necessary information to FASB (see 1-FLP, subparagraph 5 B for contact information) to correct the account
- delete the debtor from the TOP screens according to subparagraph 106 D.

**Note:** After an account balance is corrected, the debt may still be delinquent. If necessary, the State Office should consult with OGC to determine if new Internal Administrative Offset notices (Part 3), and/or PLS (5-FLP) need to be sent.--\*

**108-130 (Reserved)**

**Part 5 Federal Salary Offset****\*--131 Overview and Authority****A Authority**

Federal salary offset for delinquent FLP debt is processed according to statutory requirements in 37 U.S.C. 3716, OPM regulations at 5 CFR Part 550 subpart K, and USDA regulations at 7 CFR Part 3 subpart G.

**B Scope**

**[7 CFR 3.87] USDA agencies may issue regulations or policies not inconsistent with OPM regulations (5 CFR part 550, subpart K) and regulations in this subpart governing the collection of a debt by salary offset.**

**[7 CFR 3.70} (a) The provisions of this subpart specify USDA procedures for the collection of a Federal employee's pay by salary offset to satisfy certain valid and past due debts owed the government.**

**(b) This subpart applies to:**

- (1) Current USDA employees and employees of other agencies who owe debts to USDA; and**
- (2) Current USDA employees who owe debts to other agencies.**

Federal employee salary offset collections are generally processed and received through Treasury's TOP, after additional due process has been provided. See paragraphs 133 and 134. However, Federal and non-Federal salary offset can also be processed outside of TOP. See paragraph 132.--\*

**\*--131 Overview and Authority (Continued)****B Scope (Continued)**

**[7 CFR 3.70] (d) This subpart does not apply to debts or claims arising under the Internal Revenue Code of 1986 (26 U.S.C. 1-8023); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another law (for example travel advances in 5 U.S.C. 5705 or employee training expense in 5 U.S.C. 4108).**

**(e) This subpart identifies the types of salary offset available to USDA, as well as certain rights provided to the employee, which include a written notice before deductions begin and the opportunity to petition for a hearing and to receive a written decision if a hearing is granted. The rights provided by this section do not extend to:**

**(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;**

**(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or**

**(3) Any adjustment to collect a debt amounting to \$50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.**

**(f) These regulations do not preclude an employee from:**

**(1) Requesting waiver of an erroneous overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716;**

**(2) Requesting waiver of any other type of debt, if waiver is available by law; or**

**(3) Questioning the amount or validity of a debt, in the manner prescribed by this part.**

**(g) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under USDA regulations contained elsewhere.--\***

**\*--131 Overview and Authority (Continued)****C Non-Federal County Office Employees such as CED and PT**

**[7 CFR 3.70(c)] This subpart does not apply to debts owed by FSA county executive directors or non-Federal county office employees. For debts owed by FSA county executive directors or non-Federal county office employees to CCC or FSA, the salaries of these employees are subject to administrative offset not to exceed 15 percent of the employee's disposable pay. CCC and FSA will follow the notification requirements and procedures for collection by administrative offset as specified in 31 CFR Part 285 and 31 U.S.C. 3716.**

**Note:** There are different regulatory definitions for disposable pay. See Exhibit 2 for the definition that is applicable to this paragraph.

County Office employee salaries are:

- **not** considered Federal salaries for the purpose of offset collection
- subject to administrative offset.

For non-Federal salary offset, FLC will coordinate the offset process with the applicable State Office AO by providing written certification similar to that described in paragraph 132 and following guidance in 22-PM as applicable.

**Note:** FLP was advised that non-Federal salary offset will be handled according to 22-PM. We anticipate that it will be updated to reflect the new 15% policy that became effective with the publication of the 7 CFR 3.70 regulation change.--\*

**\*--132 Coordinating Offset With Another Federal Agency****A Coordinating Offset**

**[7 CFR 3.72] Coordinating offset with another federal agency.**

**(a) When USDA is owed a debt by an employee of another agency, the other agency will not initiate the requested offset until USDA provides the agency with a written certification that the debtor owes USDA a debt (including the amount and basis of the debt and the due date of the payment) and that USDA has complied with these regulations.**

**(b) USDA may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such a request must be accompanied by;**

**(1) A certification by the requesting agency that the person owes the debt (including the amount and basis of the debt and the due date of the payment).**

**(2) That the agency has complied with its regulations required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.**

Using Federal salary offset to collect delinquent FLP debt should primarily be done through TOP and paragraph 133.

If there is a case where using TOP for the offset is not feasible, State offices should contact LSPMD at 202-720-1984.

**B Forms and Documentation**

The authorized agency representative will use any applicable forms required by the agency FLP is requesting an offset from and will provide any applicable documentation needed.--\*

**\*--133 TOP Referral and Matching Process****A Debts in TOP**

**[7 CFR 3.72(c)] Mandatory centralized administrative offset. Debts may be referred to Treasury under §3.44 (Part 4) for collection through salary offset in accordance with 31 CFR 285.7.**

**[5 CFR 550.1108] Under 31 U.S.C. 3716, creditor agencies must notify the Secretary of the Treasury of all debts that are delinquent as defined in the FCCS (over 180 days) so that recovery may be made by centralized administrative offset. This includes those debts the agency seeks to recover from the pay account of an employee of another agency via salary offset. The Secretary of the Treasury and other Federal disbursing officials will match payments, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payments will be offset to collect the debt. Prior to offset of the pay account of an employee, an agency must comply with the requirements of 5 U.S.C. 5514, this subpart, and agency regulations issued thereunder. Specific procedures for notifying the Secretary of the Treasury of a debt for purposes of collection by centralized administrative offset are contained in 31 CFR part 285 and the FCCS.**

In most cases delinquent debt must be in TOP (Part 4) before FSA can receive Federal--\* salary offset collections.

**B Notification From Treasury**

When Treasury matches a Federal salary to a delinquent FLP debt that is at TOP:

- Treasury notifies NFAOC
- NFAOC notifies the applicable State Office
- State Office \* \* \* ensures that Federal salary offset due process is given to the debtor (paragraph 134), within 15 calendar days of receiving notification from NFAOC.

**\*--134 Determination and Notification****A Determination**

**[7 CFR 3.73] (a) In determining that an employee is indebted to USDA and that 31 CFR parts 900 through 904 have been satisfied and that salary offset is appropriate, USDA will review the debt to make sure that it is valid and past due.**

**(b) If USDA determines that any of the requirements of paragraph (a) of this section have not been met, no determination of indebtedness will be made and salary offset will not proceed until USDA is assured that the requirements have been met.**

If an FLP debt is eligible for administrative offset (Part 3), it is also eligible to receive notification of salary offset, when applicable.

**B Notification**

**[7 CFR 3.74] Notice requirements before offset. Except as provided in paragraph (b) of this section, salary offset will not be made unless USDA first provides the employee with a minimum of 30 days written notice. This Notice of Intent to Offset Salary will state:**

**(a) That USDA has reviewed the records relating to the debt and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;**

**(b) USDA's intention to collect the debt by means of deduction from the employee's current disposable pay until the debt and all accumulated interest are paid in full;**

**(c) The approximate beginning date, frequency, and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay), and the intention to continue the deductions until the debt is paid in full or otherwise resolved;**

**(d) An explanation of USDA requirements concerning interest, penalties and administrative costs; unless such payments are waived in accordance with 31 U.S.C. 3717 and § 3.17;**

**(e) The employee's right to inspect and copy USDA records relating to the debt;**

**(f) The employee's right to enter into a written agreement with USDA for a repayment schedule differing from that proposed by USDA, so long as the terms of the repayment schedule proposed by the employee are agreeable to USDA;**

**(g) The employee's right to a hearing conducted by a hearing official on USDA's determination of the debt, the amount of the debt, or percentage of disposable pay to be deducted each pay period, so long as a petition is filed by the employee as prescribed by USDA;**

**(h) That the timely filing of a petition for hearing will stay the collection proceedings;**

**(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests, and the hearing officer grants, a delay in the proceedings;--\***



**\*--134 Determination and Notification (Continued)****B Notification (Continued)**

(j) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable laws or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729-3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority;

(k) Any other rights and remedies available to the employee under laws or regulations governing the program for which the collection is being made;

(l) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary;

(m) The method and time period for requesting a hearing; and

(n) The name and address of an official of USDA to whom communications must be directed.

The State Office ensures that FSA-2710 and FSA-2711 are sent to all liable debtors or co-debtors who are receiving a Federal salary.--\*

**\*--135 Debtor Response****A Requests review of records**

[7 CFR 3.79] (a) *Notification by employee.* An employee who intends to inspect or copy USDA records related to the debt must send a letter to USDA stating his or her intention. The letter must be received by USDA within 30 days of the date of the Notice of Intent to Offset Salary.

(b) *USDA response.* In response to the timely notice submitted by the debtor as described in paragraph (a) of this section, USDA will notify the employee of the location and time when the employee may inspect and copy USDA records related to the debt.

**B Requests ARA**

The debtor may submit an ARA and it may be processed according to subparagraph 23 C and Exhibit 8.--\*

**\*--135 Debtor Response (Continued)****C Requests Hearing**

**[7 CFR 3.75] (a) Except as provided in paragraph (c) of this section, an employee must file a petition to request a hearing that is received by USDA not later than 30 days from the date of the USDA notice described in § 3.74, (paragraph 134) if an employee wants a hearing concerning:**

- (1) The existence or amount of the debt; or**
- (2) USDA's proposed salary offset schedule (including percentage).**

**(b) The petition must be signed by the employee and must identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the petition must state the objection and the reasons for it.**

**(c) If the employee files a petition for a hearing later than the 30 days as described in paragraph (a) of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).**

Hearing officers for Federal salary offset are being provided by Treasury.

If a late hearing request is received, State Office will forward it to NFAOC, and NFAOC will forward it to Treasury.

**[7 CFR 3.76] Result if employee fails to meet deadlines. An employee will not be granted a hearing and will have his or her disposable pay offset as specified in USDA's offset schedule if the employee:**

- (a) Fails to file a petition for a hearing as prescribed in § 3.75 (paragraph 134); or**
- (b) Is scheduled to appear and fails to appear at the hearing.**

30 calendar days after a debtor receives FSA-2710:

- State Office notifies NFAOC that the debtor did **or** did **not** return FSA-2711 requesting a hearing and provides the following:
  - a memorandum or cover letter
  - copies of due process letters
  - copies of any mail receipts
  - other documentation as needed
- NFAOC notifies Treasury that due process has been provided and salary offset can begin **or** that the debtor has requested a hearing.--\*

**\*--136 Hearing and Decision****A Hearing**

**[7 CFR 3.77] (a) If an employee timely files a petition for a hearing under § 3.75 (paragraph 134), USDA will select the time, date, and location for the hearing.**

**(b) A hearing will not be held and Federal salary offset will not be pursued if the cost of the hearing is greater than the delinquent debt.**

**(c)(1) Hearings will be conducted by the hearing official designated in accordance with 5 CFR 550.1107; and**

**(2) Rules of evidence will not be adhered to, but the hearing official will consider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing and weigh it accordingly, given all of the facts and circumstances surrounding the debt.**

**(d) USDA will have the burden of going forward to prove the existence of the debt.**

**(e) The employee requesting the hearing will bear the ultimate burden of proof.**

**(f) The evidence presented by the employee must prove that no debt exists or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.**

- Treasury provides for a hearing for Federal salary offset conducted through TOP.

**Note:** For non-Federal salary offset according to paragraph 131, see 22-PM.

- State Office ensures that an FSA representative is available to participate in a telephone hearing with Treasury or through any process in 22-PM--\*.

**\*--136 Hearing and Decision (Continued)****B Decision**

**[7 CFR 3.78] Written decision following a hearing.**

**Written decisions provided after a hearing will include:**

- (a) A statement of the facts presented at the hearing to support the nature and origin of the alleged debt and those presented to refute the debt;**
- (b) The hearing officer's analysis, findings, and conclusions, considering all the evidence presented and the respective burdens of the parties, in light of the hearing;**
- (c) The amount and validity of the alleged debt determined as a result of the hearing;**
- (d) The payment schedule (including percentage of disposable pay), if applicable;**
- (e) The determination that the amount of the debt at this hearing is the final agency action on this matter regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. However, even if the hearing official determines that a debt may not be collected by salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still pursue collection of the debt by other means authorized by this part; and**
- (f) Notice that the final determination by the hearing official regarding the existence and amount of a debt is subject to referral to Treasury under § 3.33 (Part 8) in the same manner as any other delinquent debt.**

**Note:** There are different regulatory definitions for disposable pay. See Exhibit 2 for the definition that is applicable to this paragraph.

- Treasury issues a hearing decision for Federal salary offset conducted through TOP.
- For non-Federal salary offset see paragraph 131 and 22-PM.

If the hearing officer determines FSA cannot collect through salary offset, the debt stays in TOP to receive other offset collections, such as from IRS tax refunds, Federal travel reimbursement payments, etc. (Part 4). If eligible, the debt may also be collected through cross-servicing (Part 8).--\*

**\*--137 Offset Process and Collection Requirements****A Timing**

**[7 CFR 3.81] (a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in USDA's Notice of Intent to Offset Salary to collect from the employee's current pay.**

**(b) If the employee filed a petition for a hearing with USDA before the expiration of the period provided for in § 3.75, (paragraph 134) then deductions will begin after the hearing officer has provided the employee with a hearing, and a final written decision has been rendered in favor of USDA.**

**(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to the procedures for administrative offset (see subpart D of this part) (Parts 3 and 4).**

**B Lump Sum or Installment**

**[7 CFR 3.82] A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of disposable pay for an ordinary pay period. In these cases, deduction will be by installments, as specified in § 3.83 (subparagraph C).--\***

**\*--137 Offset Process and Collection Requirements (Continued)****C Methods of Collection**

**[7 CFR 3.83] Procedures for salary offset: methods of collection.**

(a) *General.* A debt will be collected by deductions at officially established pay intervals from an employee's current pay account, unless the employee and USDA agree to alternative arrangements for repayment under § 3.80 (paragraph 23C and Exhibit 8).

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than 3 years. Installment payments of less than \$25 per pay period or \$50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* USDA will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

**D Interest**

**[7 CFR 3.84] Interest, penalties and administrative costs will be charged in accordance with § 3.17.**

For FLP debts, interest accrues at the rate established in the promissory note or other applicable rate such as the judgment rate if the debt is a judgment.

**E Non-Waiver of Rights**

**[7 CFR 3.85] So long as there are no statutory or contractual provisions to the contrary, no employee payment (or all or portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.--\***

**\*--138 Refunds**

**A Refunds**

**[7 CFR 3.86] USDA will refund promptly to the appropriate individual amounts offset under these regulations when:**

**(a) A debt is waived or otherwise found not owed to the United States (unless expressly prohibited by law or regulation); or**

**(b) USDA is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.--\***

**139-160 (Reserved)**

**Part 6 (Reserved)**

**161-200 (Reserved)**



**Part 7 Servicing Unsecured Account Balances and CNC Classification****201 Servicing Requirements for Unsecured Account Balances****A Issuing FSA-2716 and FSA-2717**

After all security has been liquidated, and all proceeds have been applied to the account, the authorized agency official will send FSA-2716 and FSA-2732 to all liable borrowers.

In cases of voluntary liquidation and/or third party foreclosures, FSA loans might not have been delinquent at the time of sale. As appropriate, the authorized agency official will ensure that all applicable loan servicing and offset notices are sent according to Parts 2, 3, and 4.

For conveyance and according to 5-FLP, subparagraphs 497 A and 517 A, the authorized agency official can accept a borrower's conveyance offer and deny a borrower's debt settlement request that was submitted with the conveyance offer. In these cases, after all appeal rights have been concluded and the conveyance has been processed, the authorized agency official will send FSA-2717 to all liable borrowers for any remaining account balance.

If FSA loans were not delinquent at the time of conveyance, the authorized agency official will ensure that all applicable offset notices are sent according to Parts 2, 3, and 4.

**\*--Note:** If the account has not been accelerated or is not fully matured, see 5-FLP Part 15 to determine if 5-FLP Exhibit 48 must be sent.--\*

**B Continued Servicing**

The authorized agency official will determine whether the debt can be classified as CNC if borrowers do **not**:

- pay the debt in full or submit a completed FSA-2732 within 30 calendar days of the date on FSA-2716
- pay the debt in full within 30 calendar days of the date on FSA-2717.

Internal administrative offset, TOP, and Federal salary offset will continue until the delinquency is cured.

**C No Remaining Liable Borrowers**

If there is a remaining account balance and there are no liable borrowers for the debt because of bankruptcy discharge, death, etc., the authorized agency official will prepare FSA-2731 recommending cancellation according to Part 12.

**202 CNC Classification****A Required Notification Before CNC**

Before classifying debt as CNC, borrowers must have received the following:

- all applicable loan servicing notices
- FSA-2701, FSA-2702, FSA-2703, FSA-2704, or previous authorized form, as applicable
- 60-day due process letter (Exhibit 7) sent as part of the TOP screening procedure in Part 4
- FSA-2716 or FSA-2717 or previous authorized form, as applicable
- \*--acceleration notice unless all accounts have been fully matured.

**Notes:** See 5-FLP Part 15 for acceleration process.

If state law considers voluntary conveyance offers and the completion of FSA-2732 as the borrowers acknowledgment that the debt is fully due and payable, an Acceleration Notice is not required. SED should work with OGC on state supplement if needed.--\*

Any applicable timeframes about the information in this part must have expired and all security liquidated, conveyed, released, or otherwise resolved.

**B Determining CNC Eligibility and Classification Processing**

The authorized agency official will:

- use FSA-2720 to determine CNC eligibility
- submit CNC eligible debt on FSA-2720 to the State Office through DD
- ensure that eligible debts are classified CNC using transaction code 3K, class of write off code 5
- ensure that CNC debt is referred to cross-servicing for collection according to Part 8.

**Note:** See restrictions for CNC associated with discrimination complaints in 1-FLP, subparagraph 41 K.

**C Servicing Debts Not Eligible for CNC**

The authorized agency official will:

- determine whether the debt can be debt settled according to Part 12
- monitor debt that is **not** eligible for CNC or debt settlement until it:
  - becomes eligible for CNC
  - is paid in full
  - is debt settled, or otherwise resolved.

## Part 8 Cross-Servicing

**\*--221 Mandatory Referral and Overview****A Mandatory Referral**

**[7 CFR 3.31] (a) Agencies will transfer to Treasury any legally enforceable nontax debt in excess of \$25, or combination of debts less than \$25 that exceeds \$25 (in the case of a debtor whose taxpayer identification number (TIN) is unknown the applicable threshold is \$100), that has or have been delinquent for a period of 180 days in accordance with 31 CFR 285.12 so that Treasury may take appropriate action on behalf of the creditor agency to collect or compromise, or to suspend or terminate collection, of the debt, including use of debt collection centers and private collection contractors to collect the debt or terminate collection action...**

**(b) The requirement of paragraph (a) of this section does not apply to any debt that:**

**...**

**(8) Is FSA FLP debt in which case the delinquent loan servicing procedures and appeals process required by the ConAct will apply, including the deferral for cross-servicing until all security has been liquidated, and FSA concludes its review of any pending debt settlement application from the debtor.**

FLP debt is not referred to cross-servicing based on the “over 180 calendar days delinquent” requirement. FLP debt is generally referred after all loan servicing has been completed and all security has been liquidated according to 5-FLP.

**[7 CFR 3.31(c)] ... When a final agency determination is made after an administrative appeal or review process (including administrative review under subpart F of this part), the creditor agency must transfer such debt to Treasury, if more than 180 days delinquent, within 30 days after the date of the final decision.**

Use this part and FSA- 2720 to ensure eligible unsecured debts are reviewed and referred to cross-servicing in a timely manner.--\*

**\*--221 Mandatory Referral and Overview (Continued)****B Overview--\***

TOP, cross-servicing, and AWG must be considered when processing debt settlement offers under Part 12. If a greater recovery of taxpayer dollars is possible through referral to Treasury for cross-servicing and/or AWG, then the debt must be referred to Treasury.

As part of cross-servicing, Treasury, or its contracted PCA's, perform various collection actions, such as calling debtors, sending letters to debtors, skip tracing, and negotiating debt settlement offers. FLP debts must be referred to TOP before they are referred for cross-servicing and they must remain at TOP for cross-servicing actions to be taken. Therefore, while debts are at cross-servicing, they are also at TOP and subject to offsets. In addition, Treasury administers AWG through the cross-servicing program; therefore, separate referral to AWG is not required. See Part 9 for AWG information.

**Note:** Borrowers on full-time active duty in the Armed Forces will not be referred for cross-servicing. See 4-FLP, Part 11 for guidance in servicing borrowers on active duty.

**222 Discrimination Complaints at Cross-Servicing****A Accepted Complaints**

\*--See paragraph 25.

If a CNC debtor files a program discrimination complaint and the Office of Adjudication accepts the complaint as valid, immediately FAX FSA-2722 and supporting documentation to DCIB at the ECM FAX number in 1-FLP subparagraph 5 D to recall the debt from cross-servicing.--\*

## 223 Cross-Servicing Process

### A TOP Screen Certification

The referrals of debt to cross-servicing and TOP are separate processes. However, a debt must have been certified to TOP to be referred for cross-servicing. The information on the TOP screens is used to validate eligibility for both processes.

### B Referring Debt to Cross-Servicing

If the debt is determined to be eligible for CNC according to Part 7, the State Office shall:

- process transaction code “3K” in ADPS with a class of write off code “5” for all debt types except leases, TPJ’s, and equity receivables
- refer debts to cross-servicing by completing and FAXing FSA-2721 to DCIB to the ECM FAX number in 1-FLP subparagraph 5 D
- submit FSA-2721 to DCIB by the 15th of each month to ensure that debts are included in the end of the month referral

**Note:** Borrowers and co-borrowers (including liable spouses) shall be listed on FSA-2721 with their TIN’s and must be referred at the same time. The debtor’s last known address will be provided on FSA-2721 if TIN cannot be identified. This debt will be referred to cross-servicing manually. Debts without TIN cannot be referred to TOP.

- respond to each dispute on the debt.

**Note:** Multiple disputes on the same debt may be received because Treasury and 2 different PCA’s to collect the debt. If Treasury does not receive FSA’s dispute response within 60 calendar days, the debt will be returned as uncollectible.

The State Office will also receive notification from DCIB when the following occur:

- compromises are offered
- initial cross-servicing payments are received
- debts are returned from cross-servicing
- debt has been resubmitted per State Office request.



**223 Cross-Servicing Process (Continued)****C Recalling Debts From Cross-Servicing**

When, because of such things as bankruptcy protection, debts no longer meet CNC requirements, the State Office will recall debts from cross-servicing by completing and \*--FAXing FSA-2722, with supporting documentation, to DCIB at the ECM FAX number in 1-FLP, subparagraph 5 D.--\*

**Note:** These debts should also be deleted immediately on the TOP screens by the State Office, if applicable.

**D Debt Recalled From Cross-Servicing**

When a debt has been recalled from cross-servicing because it currently does **not** meet the CNC certification requirements on FSA-2720, such as when the borrower files for bankruptcy protection, the authorized agency official will:

- ensure that transaction code 3K, class of write off code 5, is reversed
- review the debt for possible debt cancellation, if appropriate

**Example:** After consultation with the Regional OGC, the determination may be made that the debt is not eligible for CNC in a community property State where 1 obligor received a Chapter 7 bankruptcy discharge and another co-obligor did not. However, the still liable co-obligor would like to debt settle the loans.

- \*--complete debt cancellation according to Part 12, or continue monitoring the debt, as--\* applicable.

**223 Cross-Servicing Process (Continued)****D Debt Recalled From Cross-Servicing (Continued)**

If the debt was recalled from cross-servicing because the borrower filed bankruptcy, which has now been dismissed, it is possible that the debt did not complete the 2-year cross-servicing process.

- If the authorized agency official determines that the account should be canceled, the cancellation will be completed according to Part 12.
- If the authorized agency official determines the account should be resubmitted, and the State Office concurs, the State Office will complete and submit FSA-2721 to DCIB by the FAX number provided in 1-FLP, subparagraph 5 D and note that the case was previously recalled because of the borrower filing bankruptcy; however, the bankruptcy has been dismissed.

**Note:** For Treasury to accept the account, DCIB will place an “X” at the end of the case number. This only applies to cases under this scenario. Because of the limited character space available, only the primary borrower and case number can be resubmitted.

If additional assistance is needed in resubmitting the account to Treasury, the State Office will contact DCIB as shown in 1-FLP, subparagraph 5 D.

**\*--Notes:** See restrictions in 1-FLP, subparagraph 41 K, for resubmitting an account to cross servicing after a discrimination complaint.

For all cases that need to be resubmitted, please write “resubmitted” at the top of the FSA-2721.--\*

**E Debt Returned From Cross-Servicing**

Debts returned from cross-servicing shall be resolved according to Part 12.



## 224 FSA Collection Activity

### A Debts Referred to Cross-Servicing

Treasury regulations require that FSA stop all collection activity on debts referred for cross-servicing, including AWG, except TOP offsets, Federal salary offsets, and internal administrative offsets.

Debtors referred to cross-servicing are provided with payment instructions from Treasury and/or PCA's. Debtors must make their payments to Treasury or PCA because there is a significant Treasury/PCA fee debtors must pay.

When a voluntary payment is received from CNC borrowers, the:

- County Office shall call the State Office
- \*--State Office shall check the borrower's current cross-servicing status on CSNG/Artiva--\* (paragraph 225).

**Note:** If needed, call DCIB at the telephone number in 1-FLP, subparagraph 5 D for assistance.

If the account has been referred to cross-servicing, the State Office shall notify the County Office to:

- prepare a memorandum to DCIB stating the following:
  - that the payment should have been sent to cross-servicing
  - amount of the check
  - debtor's name
  - TIN
  - relationship to the borrower's or co-borrower's loan
  - case number and loan number
- mail the check and memorandum to DCIB at the address in 1-FLP, subparagraph 5 D.

Borrowers referred to cross-servicing will continue to have FSA-2065 and, if applicable, IRS Form 1098 generated at calendar year-end if the account had activity. County Offices shall forward FSA-2065 to the borrower and a copy to the State Office.

**225 CSNG/Artiva****A CSNG/Artiva and Cross-Servicing**

Treasury manages the cross-servicing program through CSNG/Artiva. FSA State Offices shall access CSNG/Artiva to check on the status of FSA cases referred to Treasury.

**B Requesting Access**

To request access to CSNG/Artiva, contact the Treasury Agency Liaison at  
\*--**CS.Liaison@Fiscal.Treasury.gov** for the most recent versions of forms for completion.--\*  
The program code for FSA Farm Loan Programs is 2KC01MOMKC1A.

\* \* \*

**C URL**

The URL to access CSNG/Artiva periodically changes.

Effective June 7, 2018, the URL is

<https://xservice.fiscal.treasury.gov/csp/prod/os.artiva.web.page.main.cls>.

Clicking on the hyperlink, or using the web browser to access the URL will direct users to the webpage to enter their “user ID” and password.

**Notes:** The webpage may look slightly different each time Treasury changes the URL.

Users must use the Chrome web browser.

**D IT Issues**

Treasury’s IT desk for help with CSNG/Artiva can be contacted by links in the system, or by calling 304-480-7777.

## 226 Debt Settlement Offers

**A From Borrower**

CNC debt may be settled by FSA upon application by the borrower according to Part 12, **if the debt has not been referred to Treasury for cross-servicing, or if all of the borrower's loans have been returned from cross-servicing.** If a CNC borrower submits or ~~inquires about a debt settlement application, the State Office shall access CSNG/Artiva to determine whether the account has been referred for cross-servicing. See paragraph 225 for access.~~

| <b>IF the account has...</b>  | <b>THEN inform the borrower that...</b>   |
|---|---|
| been referred for cross-servicing and at least 1 loan is still at cross-servicing   | the debt is now at Treasury and negotiations need to be with Treasury. Borrowers: <ul style="list-style-type: none"> <li>• may contact Treasury at 1-888-826-3127</li> <li>• have no appeal rights for settlements rejected by Treasury and returned to FSA.</li> </ul> |
| either of the following: <ul style="list-style-type: none"> <li>• not been referred for cross-servicing (and this referral is not required)</li> <li>• all of the borrower's/co-borrower's loans have been returned from cross-servicing</li> </ul> | a debt settlement offer may be considered. See Part 12 for processing debt settlements.   |

**Note:** If a debt settlement offer is received after the State Office has submitted the debt for cross-servicing referral on FSA-2721, but the debt has not yet been referred, the State Office should notify DCIB immediately by FAX at the ECM FAX number in 1-FLP, subparagraph 5 D. Include the terms of the debt settlement offer and request a delay in referring the debt for cross-servicing until a decision is made. Notify DCIB immediately when a decision is made. If the offer is rejected, and all appeal rights exhausted, the debt will be sent to Treasury for cross-servicing in the next referral.

## 226 Debt Settlement Offers (Continued)

**A From Borrower (Continued)**

Treasury will notify FSA and request concurrence for some repayment agreements and compromises. This notification is done on a loan-by-loan basis, not by account. In cases where a debtor has more than one FSA loan referred to cross-servicing and FSA is advised of an agreement to compromise or adjust 1 loan or several loans, but not all of the debt, SED's may approve the settlement agreements on a loan-by-loan basis.

**\*--[7 CFR 3.30(c)] In cases where a debtor has more than one FSA FLP loan that has been referred to cross-servicing and Treasury accepts an agreement to compromise or adjust one loan, or several loans, but not all of the debt, cancellation of any loan balances remaining on the compromised or adjusted debt will not be processed for the debtor until:**

- (1) All payments have been received as agreed; and**
- (2) All loans referred to the cross-servicing program for that debtor have been returned to FSA, with or without payment agreements.**

Cancellation will also **not** be processed until all co-borrower issues are resolved, including recall and returns.--\*

**226 Debt Settlement Offers (Continued)****B From Treasury**

If a repayment agreement, adjustment offer, or compromise offer has been negotiated by Treasury, State Offices shall:

- receive Treasury's DMS action form or concurrence request from \* \* \* DCIB about a repayment agreement/adjustment offer or compromise offer
- receive a list of all debts Treasury has returned from cross-servicing for the month from DCIB
- based upon the information in the case file, determine whether the debt is eligible for settlement through the proposed repayment/adjustment offer, compromise offer, or if the debt may be canceled.

SED shall:

- obtain concurrence from the U.S. Attorney or FSA FLP National Office, if necessary
- sign the DMS action form
- ENTER "Y" or "N" in the "Approved" column, as applicable
- \*--FAX to DCIB at the ECM FAX number in 1-FLP, subparagraph 5 D.--\*

**Note:** If an offer is not approved, include supporting documentation to substantiate why greater repayment is warranted. Approved agreements must not exceed 5 years according to Part 12.

**227-240 (Reserved)**



**Part 9 AWG****\*--241 Overview and Authority****A Authority**

AWG allows a Federal Agency to require a non-Federal employer to withhold up to 15 percent of an employee's disposable income to pay nontax delinquent debt. Treasury, on behalf of the Federal Agency, is authorized to issue a wage garnishment order to collect the debt. The employer will be required to send the amounts deducted to Treasury for payment to the Federal Agency. AWG is governed by Federal law.

Debts referred to Treasury for cross-servicing are generally eligible for AWG.

The AWG Reference Guide for LSPMD (Exhibit 29) is for National Office use in the AWG process.

FLP is implementing AWG through the authority provided in:

- Government-wide regulations published by Treasury at 31 CFR Part 285
- USDA-wide regulations at 7 CFR Part 3.

**[7 CFR 3.50] This subpart (part 9) provides USDA procedures for use of administrative wage garnishment to garnish a debtor's disposable pay to satisfy delinquent nontax debt owed to USDA creditor agencies.**

**Note:** There are different regulatory definitions for disposable pay. See Exhibit 2 for the definition that is applicable to this paragraph.--\*

**\*--241 Overview and Authority (Continued)****B Scope**

**[7 CFR 3.51] (a) This subpart (Part 9) applies to any agency that administers a program that gives rise to a delinquent nontax debt owed to the United States and to any agency that pursues recovery of such debt.**

**(b) This subpart will apply notwithstanding any provision of State law.**

**(c) Nothing in this subpart precludes the compromise of a debt or the suspension or termination of collection action in accordance with the provisions of this part or other applicable law.**

**(d) The receipt of payments pursuant to this subpart does not preclude an agency from pursuing other debt collection remedies under this part. An agency may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.**

**(e) This subpart does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the salary offset procedures of subpart G of this part.**

**(f) Nothing in this subpart requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations, or other provisions of this part.**

**(g) This subpart does not apply to foreign debt.**

**C Process**

**[7 CFR 3.53(a)] USDA has determined to pursue administrative wage garnishment of USDA debtors by referral of nontax legally enforceable debts to Treasury for issuance of garnishment orders by Treasury or its contractors.**

AWG is administered through Treasury's cross-servicing program. If an FLP debt is classified CNC and referred to cross-servicing according to Part 8, Treasury will:

- determine whether it will use AWG to collect the FLP debt
- perform all necessary due process notifications.

The only times FLP will need to become involved in the AWG process are when:

- borrowers request to inspect and/or copy their FLP records

**Note:** See subparagraph 244 B for guidance.--\*



**\*--241 Overview and Authority (Continued)**

**C Process (Continued)**

- Treasury requests FLP's assistance in evaluating a debt settlement offer or ARA

**Note:** See subparagraph 244 C for guidance.

- borrowers request a hearing.

**Note:** See subparagraph 245 A for guidance.

The overall process when a borrower requests an AWG hearing is as follows:

- Treasury will notify OCFO that a hearing was requested
- OCFO will notify LSPMD that a hearing was requested
- Treasury will notify LSPMD and the borrower of the hearing date, etc.
- LSPMD will:
  - notify the State Office servicing the account that a hearing was requested
  - request any documentation or information needed for the hearing
- the State Office will provide the documentation or information to LSPMD
- LSPMD and the applicable FLC will coordinate who will represent FLP at the hearing--\*
- Treasury's hearing official will make a decision and notify all parties.

**\*--241 Overview and Authority (Continued)****D Debt Settlement Offers**

While FLP debt is referred to Treasury for AWG and/or cross-servicing, borrowers must submit any debt settlement offer to Treasury and/or Treasury's PCA servicing the debt. If needed, Treasury and/or PCA will forward the debt settlement request to FSA for review through NFAOC or OCFO.

Accounts eligible for AWG and/or cross-servicing are classified CNC (3K class of write off code 5). If a CNC borrower submits or inquires about a debt settlement application, see Part 8.

**E Other Collection Actions Authorized**

Local agency officials will continue to use all applicable collection tools, including centralized administrative offset through TOP (Part 4) and internal administrative offset (Part 3).

**242 Required Agency Notification****A Initial Notifications**

**[7 CFR 3.53(b)] As specified in § 3.11, (Part 2) agencies must notify debtors of their intent to pursue garnishment of their disposable pay through referral of the debt to Treasury for issuance of an administrative wage garnishment order and provide debtors with the opportunity for review of the existence of the debt under subpart F of this part within 60 days of the date of the demand letter.**

FLP satisfies these requirements, including FSA's intent to collect through AWG, in the--\* 60-day due process letter that is sent by NFAOC before referring FLP debt to Treasury for TOP. See Exhibit 7 for an example of this due process letter.

A paragraph in the 60-day due process letter advises FLP borrowers that after liquidation of loan security, any remaining loan balance may be referred to Treasury for collection through PCA's (generally referred to as "cross-servicing") and AWG.

## 242 Required Agency Notification (Continued)

### B Subsequent Notification

In some cases, there can be a time delay of several years between receiving the notice in subparagraph A for TOP when the account is initially delinquent and referral of debt to cross-servicing after liquidation or conveyance of all security.

Therefore, after liquidation or conveyance of all security, FSA-2716 or FSA-2717 is sent to borrowers to remind them that the unsecured balance owed on their loans will be sent to Treasury for collection through cross-servicing and AWG. FSA-2716 and FSA-2717 also give borrowers an additional opportunity to resolve the debt before it is actually referred for cross-servicing and AWG.

**Note:** FSA-2716 or FSA-2717 will be sent as an attachment to 5-FLP, Exhibit 48 for unsecured accounts that have not been previously accelerated.

## 243 Referral to Treasury

### A Referral Required

**\*--[7 CFR 3.53(c)] Upon expiration of the 60-day period for review, or upon completion of a review under subpart F of this part that upholds the agency's determination of the debt, USDA will transfer the debt for collection through administrative wage garnishment as well as other means through cross-servicing or centralized administrative offset.**

Borrowers are provided an opportunity to review the debt when they receive the initial offset notification letters (Part 3) and the 60-day due process letter (Exhibit 7), which is sent before referring the debt to Treasury. See subparagraphs 63 F, 107 D, and Exhibit 13.

### B Collection Through AWG

FLP debt will be collected through AWG by Treasury and/or Treasury's PCA's after FSA:

- classifies the account CNC
- refers the debt to cross-servicing according to Part 8.

**Note:** CNC accounts involved in an accepted discrimination complaint according to paragraph 25, are **not** eligible for AWG or cross-servicing. See paragraphs 25 and 222 for servicing CNC accounts with an accepted discrimination complaint.--\*

**\*--244 Treasury Notification and Borrower Response****A Treasury Notification to Borrower**

**[7 CFR 3.53] (d) If Treasury elects to pursue collection through administrative wage garnishment, Treasury, or its contractor, will notify the debtor of its intent to initiate garnishment proceedings and provide the debtor with the opportunity to inspect and copy agency records related to the debt, enter into a repayment agreement, or request a hearing as to the existence or amount of the debt or the terms of the proposed repayment schedule under the proposed garnishment order, in accordance with 31 CFR 285.11.**

**B Request to Inspect and/or Copy Records**

Borrowers may make a request to inspect and/or copy records. FLP State and local offices may receive the request directly from the borrower, or it may be forwarded on the borrower's behalf from Treasury, OCFO, or LSPMD. All FLP offices must respond in a timely manner to these requests. See 3-INFO, paragraphs 17 and 20 for information about records holding office responsibility and legal basis required for withholding information.

**C Request for ARA or Debt Settlement**

Treasury may request assistance in determining the acceptability of ARA, or debt settlement offers. State Offices must respond in a timely manner to LSPMD requests for information.

ARA's will be considered according to Exhibit 8.--\*

**245 AWG Hearing According to 31 CFR 285.11(f)****A Hearing Request**

The debtor has a statutory right to a hearing with respect to the existence and amount of the debt claimed or the terms of the proposed repayment schedule under the garnishment order (hardship).

The hearings are generally conducted by teleconference, and the hearing official establishes the date and time.

**B Timely Requests**

Treasury will:

- make the decisions for FLP because borrowers submit the requests directly to Treasury
- determine whether AWG will begin before a hearing in cases where hearing requests are **not** timely.

**C Hearing Official**

Treasury, Bureau of the Fiscal Service will provide hearing official services for AWG hearing requests.

**D Hearing Procedure**

Treasury's hearing official will send the hearing information to the borrower, OCFO, and LSPMD.

The pre-hearing Order sent to LSPMD establishes the hearing date and the date that the following must be submitted to the hearing official and borrower:

- narrative about the existence, computation of amount, and documentation of FLP debt
- any information about the borrower's ability to repay all or part of the debt through AWG
- copies of the proposed hearing exhibits
- list of the proposed hearing exhibits
- list of the proposed hearing witnesses.

## 245 AWG Hearing According to 31 CFR 285.11(f) (Continued)

**D Hearing Procedure (Continued)**

LSPMD, or its designee, shall:

- request documentation from the applicable State Office, NFAOC, and OGC as needed
- review all relevant documentation about the case
- prepare the hearing exhibits, list of hearing exhibits, and list of hearing witnesses
- send copies of hearing documents to the hearing officer and borrower
- participate in the teleconference hearing
- respond to any follow-up questions from the hearing official in a timely manner.

FLC, or designee, shall prepare:

- a narrative including the following:
  - the existence, computation of amount, and documentation of FLP debt
  - any information the State or local FSA office may have about the borrower's ability to repay all or part of the debt through AWG
  - a statement confirming that all security that was pledged for the loans was liquidated and the proceeds were applied to the account
- copies of the promissory notes
- printout of each loan showing principal, interest, and daily interest accrual as of the date printed, with a notation showing which items are administrative expense/recoverable cost items
- any documentation, such as a debt settlement application, financial statements, etc., FSA may possess about the borrower's ability to repay all or part of the debt through the garnishment process
- name, address, e-mail, telephone number, and FAX number of the contact person for the case.

\*--Ensure that documentation is assembled and e-mailed, in a manner that protects PII, to the LSPMD loan officer assigned the case.--\*

**Note:** The e-mail subject should read "AWG Hearing – (Borrower's Name and State)".

In cases where LSPMD requests that an FLP employee familiar with the servicing of the case be available to participate in the AWG teleconference, FLC shall designate which FLP employee from the State shall participate.

245 **AWG Hearing According to 31 CFR 285.11(f) (Continued)****D Hearing Procedure (Continued)**

Any requests for additional information or documentation from Treasury, OCFO, or the hearing official must be responded to immediately to ensure timely processing.

If a borrower's circumstances change so that AWG would not be appropriate at any time before the AWG hearing is held, or during the time period between hearing and receiving the hearing official's decision, the State Office must notify LSPMD, and see Parts 3, 4, and 8 to determine whether the debt must also be removed from cross-servicing TOP and/or internal administrative offset.

**Examples:** If the borrower files for bankruptcy protection, the debt is no longer eligible for cross-servicing, AWG, or TOP.

If the borrower provides a notice of employment termination that he or she received, the borrower must also submit the letter to Treasury and/or PCA  
\*--servicing the account. The State Office will access CSNG/Artiva, and review any CSNG/Artiva documentation and servicing notes, to determine whether--\* the letter was accepted by Treasury as notification that the borrower is no longer employed, and will notify LSPMD accordingly. LSPMD will notify OCFO and Treasury's hearing official, if a hearing is no longer necessary, etc. In cases of employment termination, AWG would not be appropriate. However, internal administrative offset, and continued referral to cross-servicing and TOP may be appropriate based on the criteria in Parts 3, 4, and 8.

If AWG hearings are canceled, LSPMD will notify the State Office accordingly.

**E Burden of Proof and Hearing Record**

**[31 CFR 285.11(f)(8)] (i) The agency will have the burden of going forward to prove the existence or amount of the debt.**

**(ii) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.**

**F AWG Decision**

The hearing official sends the AWG decision to the borrower, OCFO, and LSPMD. LSPMD will notify the applicable State Office.

The issuance of proposed garnishment orders by Treasury shall not be subject to appeal to NAD under 7 CFR Part 11. Hearings will be conducted according to 31 CFR 285.11(f).

**246 Garnishment****A Withholding Order**

\*--Treasury sends the withholding order to the employer on behalf of FLP.

**B Employer Certification**

Treasury sends the certification to the employer on FLP's behalf. The employer returns--\* the completed form to Treasury.

**247 Processing Garnishment Amounts and Collections****A Employer Processing**

The employer submits withheld amounts to Treasury. Treasury sends the funds to FSA in automated reports.

**B FLP Processing**

AWG collections will be included with all other collections received from Treasury through cross-servicing and/or TOP. Monies collected are applied to borrowers' loans according to 3-FI and 4-FLP, Part 5.

When Treasury reviews an account, they are reviewed by individual loans, not by the total debt owed by the borrower. As such, once an individual loan is paid in full, Treasury ceases AWG collections and returns the account to FSA. Even in instances where the borrower has more than 1 loan covered by AWG, the subsequent loans will be returned because Treasury has ceased collections. Therefore, when a borrower has more than 1 loan that should be paid from AWG, the State Office will contact DCIB for assistance in resubmitting any additional loans to Treasury to resume collection through AWG. See 1-FLP, subparagraph 5 D for DCIB contact information.

DCIB must notify Direct Loan FaSB to reverse the CNC classification code (3K class of write-off code 5) to apply AWG or cross-servicing collections. After applying collections, Direct Loan FaSB must re-establish the CNC classification code, as appropriate.



**248 Changes to Garnishment Amount****A Following Involuntary Separation**

In many cases, FSA will **not** know when borrowers are working or unemployed. AWG is processed through Treasury's cross-servicing program. While accounts are referred to AWG and/or cross-servicing, FLP borrowers must communicate directly with Treasury and/or PCA's about their financial circumstances.

When contacted by borrowers after a garnishment order is established, State and local FSA offices shall advise borrowers that they must contact Treasury and/or PCA directly. The contact information is in the letters that borrowers receive from PCA and/or Treasury. The status of the debt at Treasury and/or PCA is available in CSNG/Artiva.

**Do not** recall debts from AWG or cross-servicing or edit any information in CSNG/Artiva based on a borrower's claim that he or she is no longer working. The borrower must contact Treasury and/or PCA to report this information, and it will be verified by PCA and/or Treasury.

**B Financial Hardship**

At this time, hardship requests for FLP debt are reviewed by Treasury. Treasury will make \*--any hardship determination on FLP's behalf and notify the borrower's employer of any--\* needed adjustments to the garnishment amount.

In cases where the garnishment amount has been adjusted because of hardship, Treasury will periodically request updated financial information from the FLP borrower to determine whether the hardship still exists and/or if the garnishment amount must be adjusted again.

Treasury uses a cost-of-living calculator to determine an appropriate garnishment amount. The calculator considers the debtor's individual financial circumstances and the cost-of-living where the debtor lives. The regional cost-of-living amounts are adjusted each year based on information compiled by IRS.

**C Debt Paid in Full**

In cases where the debt is paid in full, Treasury will notify the employer to discontinue garnishment for FLP.

**249-280 (Reserved)**

**Part 10 (Reserved)**

**281-350 (Reserved)**



**Part 11 Monitoring, Servicing, and Settling Judgment Debts****351 Monitoring Judgment Debts****A Monitoring Status**

State Offices shall monitor the status of all judgments with DOJ, except pending foreclosure judgments, to determine whether:

- any collections have been made on the judgment in the last 12 months
- the account has been referred to Department of Treasury for TOP and/or cross-servicing.

**B Request Return**

State Offices shall request that DOJ return judgments if no collections have been made by DOJ in the last 12 months.

**Note:** Consult with the Regional Attorney to determine whether State law prevents FSA from pursuing offset collection or referring deficiency judgments for TOP.

**\*--C Contact Number For DOJ**

For cases that have been submitted to DOJ, the contact number for status updates is 202-532-4343.--\*

**352 Servicing FSA Debts That Are Under DOJ's Jurisdiction****A Internal Administrative Offset**

\*--To achieve the greatest recovery on judgment debt, it is FLP's policy to use internal offset/noncentralized offset whenever possible and appropriate. Therefore, State and--\* County Offices shall:

- determine whether the borrower will receive Farm Program payments and request written DOJ concurrence to pursue collection of these monies as applicable
- pursue internal administrative offset according to Part 3 after obtaining DOJ concurrence
- notify DOJ of all administrative offset collections received and applied to the judgment accounts.

**B TOP Referral**

DOJ is responsible for referring debts under its control to TOP and it is DOJ's policy to do so while DOJ is pursuing collection of the debt. If the debt is selected for TOP during FSA's TOP referral process, the debt must be deleted from the TOP Eligible Screens at the end of each quarter using delete code "05". When DOJ returns the case to FSA, DOJ withdraws the debt from TOP, and it is FSA's responsibility to refer the debt to TOP according to Part 4.

**C DOJ Fees**

If the borrower's account is referred to DOJ for foreclosure and/or other collection action after foreclosure, such as a deficiency judgment or enforcing a judgment lien, any attorney's fees and any fees charged by DOJ will be added to the debt.

**D Debt Settlement**

Settlements negotiated and approved by DOJ will be completed under FCCS authorities as set forth in Exhibit 34.

## 353 Servicing Judgment Debts Returned by DOJ

## A Servicing Accounts Returned by DOJ

Service accounts returned by DOJ according to the following table.

| IF the judgment lien has...   | THEN...  |
|---|--|
| <p><b>not expired</b></p>   | <ul style="list-style-type: none"> <li>• pursue internal administrative offset according to Part 3 if collection of Farm Program payments is possible</li> <li>• refer the account to Treasury for TOP offset according to Part 4, cross-servicing according to Part 8, and AWG according to Part 9, as appropriate. State Offices shall:</li> <li>• complete FSA-2720 and classify the account as CNC by processing transaction code “3K” with a class of writeoff code “5”, except for employee defalcations and TPJ’s</li> <li>•*--submit FSA-2721 to DCIB by FAX at the ECM FAX number in 1-FLP, subparagraph 5 D.--*</li> </ul> <p><b>Notes:</b> In cases where an acceptable debt settlement offer is received from the debtor before referral to cross-servicing, the State Office may process it according to Parts 8 and 12.</p> <p>Referral of the debt to cross-servicing is required unless any of the exceptions under 31 CFR 285.12 applies or if the borrower is no longer eligible for cross-servicing. The exceptions are included in FSA-2720.</p> |
| <p>expired (20 years from the date of judgment, unless renewed)</p> <p><b>Note:</b> If the U.S. Attorney states the judgment expired after 10 years, then consult the Regional Attorney to determine whether the judgment can be revived.</p> | <p>cancel the debt according to Part 12.</p> <p><b>Note:</b> If continuing to offset after the judgment lien has expired, get confirmation from the Regional Attorney that continuing to offset is allowed. Also consider if partial cancellation would be appropriate in these instances.</p>   |

**354 Debt Settlement of Judgment Debts**

\* \* \*

**A Documentation**

Insert any of the following that apply in FSA-2731 and/or FSA-2732:

- U.S. Attorney's file is closed
- judgment has expired 20 years after the judgment date, and the judgment is not renewed

**Note:** If the U.S. Attorney states that the judgment expired after 10 years, consult the regional OGC to determine whether the judgment can be revived.

- debt was returned from cross-servicing as uncollectible
- debtor is unable to pay any part of the debt and has no reasonable prospect of being able to pay any part of the debt
- debt cannot be collected through Federal salary offset and/or AWG.

**B Releasing Judgment Lien by DOJ**

The State Office shall notify the U.S. Attorney's office that it has canceled debt subject to a judgment lien. The notice should request that this judgment lien be released.

**355-400 (Reserved)**

## Part 12 Debt Settlement

**\*--401 Overview and Authority****A Authorities**

[7 CFR 761.401] (a) This subpart (Part 12) describes the Agency's policies for debt settlement as authorized by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921, 7 U.S.C. 1981, 1981a, 1981d, and 2008h).

(b) FLP debts that cannot be debt settled using CONACT debt settlement authority such as when a borrower has received previous debt forgiveness on another direct loan made under the CONACT, will be processed as specified in 31 U.S.C. chapter 37 and 31 CFR parts 900 through 904 (Exhibit 34).

[7 CFR 761.403] General (a). The Agency will settle debts that result from, except as otherwise specified in this section:

- (1) (i) Farm Ownership loans (part 764, subpart D of this chapter), including down payment loans (764, subpart E of this chapter);
  - (ii) Operating loans (part 764, subpart G of this chapter), including microloans part 764 of this chapter), and youth loans (part 764, subpart H of this chapter);
  - (iii) Emergency loans (part 764, subpart I of this chapter);
  - (iv) Conservation loans (part 764, subpart F of this chapter);
  - (v) Economic Emergency loans (serviced under parts 761 through 767 of this chapter); softwood timber loans; Soil and Water loans; Individual Recreation Loans; Irrigation and Drainage loans; and Shift-in-land-use (Grazing Association) loans;
- (2) Costs associated with servicing a borrower's account including, but not limited to, Uniform Commercial Code filing fees, surveys, appraisals, protective advances, and liquidation expenses;
- (3) Debts reduced to judgment;
- (4) Non-Program Loans;
- (5) Amounts the Agency is authorized to recapture through agreements such as the Shared Appreciation Agreement (part 766, subpart E of this chapter);
- (6) Loss claims paid on guaranteed loans (part 762 of this chapter);
- (7) Unauthorized assistance;
- (8) Amounts the Agency may collect from third party converters, or other individuals or entities having possession of security for FLP loans or monies obtained through the sale of FLP loan security; and
- (9) Debt returned to the Agency from the Treasury cross-servicing program

See paragraph 403 for the different types of CONACT debt settlements, and paragraphs 404 and 404 for guidance on processing each type.--\*

\* \* \*

**\*--401 Overview and Authority (Continued)****A Authorities (Continued)**

**[7 CFR 3.19] (a) An agency will follow the standards specified in 31 CFR part 902 for the compromise of debts pursuant to 31 U.S.C. 3711 arising out of the activities of, or referred or transferred for collection services to, that agency, except where otherwise authorized or required by law.**

**(b) For FSA FLP debts, the first instance of debt cancellation is exempt from the monetary limits established in 31 CFR 902.1.**

**[7 CFR 3.21] An agency will promptly refer to Justice for litigation debts on which aggressive collection activity has been taken in accordance with this part, and that cannot be compromised by the agency or on which collection activity cannot be suspended or terminated in accordance with 31 CFR parts 902 and 903. Agencies will follow the procedures set forth in 31 CFR part 904 in making such referrals.**

FCCS, according to USDA wide regulations at 7 CFR Part 3, and 31 CFR 900-904, will continue to be used for borrowers who have received previous debt forgiveness.--\*

See Exhibit 34 for FCCS debt settlement.

**Note:** For cases that are a combination of judgment and nonjudgment debt, and the judgment is retained by DOJ according to paragraph 352, coordinate debt settlement of the judgment debt and nonjudgment debt with DOJ as the approval official.



**\*--401 Overview and Authority (Continued)****B Approval Forms**

Use FSA-2731 for individuals and entities listed on the promissory note when a signature is not needed. See paragraph 404.

Use FSA-2732 when the debtor requests debt settlement. If a borrower is unable to act, another party having legal authority to act on the borrower's behalf may sign the FSA-2732 and any other required forms. See paragraph 405.

Cases with multiple debtors may use a combination.

**Example:** 2 borrowers are liable for the debt. Borrower "A" dies or is discharged, etc. Borrower "B" submits FSA-2732, requesting a debt settlement. FSA-2731 will be completed for borrower "A" and attached to FSA-2732 and the debt settlement application processed under paragraph 405.

**C Other Factors to Consider**

Other factors that may influence the type of debt settlement, or acceptability of a debt settlement offer:

- OGC has advised in writing that the debt is legally unenforceable
- offset collections are being received but are not sufficient to significantly reduce the balance owed.

Include documentation as applicable when reviewing debt settlement according to paragraph 404 or 405.

Use FSA-2732 and paragraph 405 when the debtor requests debt settlement.

Use FSA-2731 and paragraph 404 in all other cases.--\*

**\*--401 Overview and Authority (Continued)--\*****D Youth Loans**

Notwithstanding any other FSA regulation, forgiveness of youth loan debt, because of circumstances beyond the borrower's control, does not preclude the applicant, or any member of an entity applicant, from obtaining additional direct or guaranteed loans from FSA. This includes assumption of FSA debt or any other financial assistance that cites this part as part of its eligibility. The criteria for determining whether the forgiveness was beyond the borrower's control are the same criteria used in 7 CFR 766.104(a)(1). Any borrower who met those criteria before the youth loan was forgiven will not be denied loan assistance based on forgiveness of youth loan debt. Debt that was forgiven on any other type of loan, even with the same borrower, is still considered according to present regulations and can preclude the applicant from receiving a loan from FSA.

Past debt forgiveness on a youth loan, or an existing delinquency on a youth loan, does not preclude the borrower from receiving direct or guaranteed student loans.

Any borrower who receives debt forgiveness on a youth loan, or requests information from FSA to provide any creditor, shall be provided FSA-2727 by mail or in person.

**\*--401 Overview and Authority (Continued)****E Joint Debtors**

Settlement may not be approved for one joint debtor unless approved for all debtors. “Joint debtors” includes all parties (individuals, partnerships, joint operators, cooperatives, corporations, estates) who are legally liable for payment of the debt.

Separate and individual adjustment offers from joint debtors must be accepted and processed only as a joint offer. Joint debtors must be advised that all debtors will remain liable for the balance of the debt until all payments due under the joint offer have been made.

A separate FSA-2732 will be completed by each debtor requesting debt settlement, unless the debtors are members of the same family and all necessary financial information on each debtor can be shown clearly on a single application. Separate applications will be sent to the State Office as a unit.

For co-obligors where the debtor’s signature is not needed, FSA-2731, FSA-2080, or other applicable documentation will be used.

**F Offer to Pay Debt in Full Over Time**

Offers to pay debt in full over time are generally repayment agreements, not debt settlements. However, the guidelines in this part will be used to document that the borrower cannot pay the full amount of the debt in one lump sum as required by subparagraph 23 D.

ARA’s with extended repayment terms similar to adjustment offers may be flagged SAA.--\*

**\*--402 Determining If The Debt Can Be Settled****A Debt That Can Be Settled**

**[7 CFR 761.403] (d) The Agency will consider settlement of a debt only when:**

**(1) All security has been liquidated and the proceeds, less any prior lien amounts, have been applied to the debt; or the Agency received a lump sum payment equal to the security's current market value, less any prior lien amounts, and**

**(2) Payment is received based on the Agency's determination of the amount the borrower can pay to resolve the remaining balance owed on the unsecured debt.**

**(3) The lump sum payment made under paragraph (d)(1) of this section for the security's market value may be submitted by the borrower, an individual authorized to act for the borrower pursuant to a power of attorney document or court order, or an individual who is not an obligor on the debt but who has an ownership interest in the security.**

For cases, that still have security that has either not been liquidated or that has not been accounted for, FSA can approve a compromise or adjustment offer, if the offer includes a lump sum payment for the value of the security. See paragraph 403.

For cases with previous debt forgiveness, see Exhibit 34.

**B Debt That Cannot Be Settled**

**[7 CFR 761.403(c)] FSA will not engage in settlement of a debt if:**

**(1) Foreclosure of security has been initiated and is pending with Justice, unless Justice has advised FSA that it does not object to the settlement; or**

**(2) Debts that have been referred to Justice for a judgment, or a judgement has been obtained by the United States Attorney or Justice, unless Justice closes its file and releases the judgement back to FSA for continued servicing; or**

**(3) The debtor's account is involved in a fiscal irregularity investigation in which final action has not been taken or the account shows evidence that a shortage may exist and an investigation will be requested; or**

**Note:** The “; or” at the end of (3) is a typo in the CFR. It will be fixed in a future amendment.

**[7 CFR 761.403(f)] Settlement of FLP debt referred to Treasury's cross-servicing program and returned to the Agency as uncollectible will not be processed for the borrower until all FLP debts referred to the cross-servicing program for that borrower have been returned, with or without payment agreements.--\***

**\*--402 Determining If The Debt Can Be Settled (Continued)****B Debt That Cannot Be Settled (Continued)**

The following debts also cannot be settled.

- If the matter has been referred either to OIG or OGC because of suspected criminal violation, or criminal prosecution is pending unless, the OIG has declined to investigate the matter or, OGC has advised otherwise, or the case is in the hands of the United States Attorney who either approves or concurs with the debt settlement or advises FSA to debt settle it.
- If a request for referral to the United States Attorney to institute a civil action or for any other issue to protect the interest of the Government has been made and is still pending.

**C Additional Guidance**

State Directors will obtain, when necessary, advice from the OGC in handling proposed debt settlement actions which involve legal problems.

See Exhibit 34 for debt settling accounts with previous debt forgiveness.

**Note:** See exhibit 2 for what is considered debt forgiveness.

See 5-FLP, paragraph 421 for handling civil and criminal cases.

See 5-FLP, Part 10 for fiscal irregularities and unauthorized assistance.

See 7-FLP, Part 11 for monitoring, servicing, and settling judgment debt.

**[31 CFR 285.12 (c)] (2) On behalf of the creditor agency, Fiscal Service will take appropriate action to collect or compromise the transferred debt.**

According to Treasury regulations, FSA debtors wanting to debt settle must work with Treasury while their debt is referred to the cross servicing program. See paragraph 226.--\*

**\*--403 Types of Debt Settlement****A Compromise**

**[7 CFR 761.406(a)] Compromise. The Agency may compromise a debt owed to the Agency if the requirements of this subpart are met and:**

- (1) The borrower pays a lump sum as a compromise for the remaining unsecured debt; and**
- (2) The amount is reasonable based on the Agency's determination of what the borrower can pay to settle the debt.**

If a debtor has disposed of security prior to applying for debt settlement, proceeds from the disposed security must first be applied on the debtor's account, or the value of that security must be included in the lump sum compromise amount.

Security may be retained by the debtor if the debtor offers an amount at least equal to the current fair market value (including any crop security) less any prior lien amounts. Any remaining unsecured debt may be debt settled.

Unsecured debts considered under this paragraph are most frequently account balances remaining after the debtor has sold security property to another party/entity, the security has been liquidated through foreclosure, or FSA has accepted a deed in lieu of foreclosure and the borrower was not released from liability.

An offer to compromise must represent the maximum amount FSA determines the debtor can pay based on a current financial statement and other information available to FSA.

Use FSA-2732 and paragraph 405.--\*

**\*--403 Types of Debt Settlement****B Adjustment**

**[7 CFR 761.406(b)] Adjustment.** The Agency may settle a debt owed to the Agency through an adjustment agreement if the requirements of this subpart are met and:

- (1) The borrower agrees to pay the adjustment amount for a period of time not to exceed 5 years; and
- (2) The amount is reasonable based on the Agency's determination of what the borrower can pay to settle the debt; and
- (3) The borrower provides documentation that funds are, or will be, available to pay the adjustment offer through its term.

Where the debtor is able to pay an amount in excess of a lump sum compromise offer, an adjustment offer must call for additional amounts the Agency determines the debtor is able to pay over a period of time not to exceed 5 years.

**Note:** The initial payment for an adjustment offer must be at least as much as the total value of all security that the debtor is retaining or has disposed of without submitting the funds to FSA, and any security that is considered missing or unaccounted for

An adjustment offer is to be scheduled for payment over the shortest period FSA determines is feasible.

Adjustment offers will not be approved in any case unless there is reasonable assurance that the debtor will be able to make the payments as they become due.

Adjustment offers to pay the debt in full over time will be processed as repayment agreements according to subparagraph 23 D using FSA-2732 and other forms and information as needed to document the offer.

Use FSA-2732 and paragraph 405

**C Cancellation**

**[7 CFR 761.406(c)] Cancellation.** The Agency may cancel a debt owed to the Agency if the requirements of this subpart (Part 12 or Exhibit 34) are met and the application and supporting documents indicate that the borrower is unable to pay a compromise (subparagraph A) or adjustment (subparagraph B) offer.

Use FSA-2732 for cancellation requested by the debtor or someone authorized to act on behalf of the debtor and paragraph 405.

Use FSA-2731 for cancellation without borrower/debtor signature and paragraph 404.--\*

**\*--403 Types of Debt Settlement****D Settlement Without Borrower/Debtor Signature**

**[7 CFR 761.403 (b)] The debtor's signature is not required to process some debt settlement actions. These cases include, but are not limited to, debts discharged in bankruptcy and debts returned from Treasury's cross-servicing program with amounts still owing when no further collection can be taken.**

Use FSA-2731 and paragraph 404.

**Note:** For bankruptcy cases, if the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance with advice from OGC, the debt is not discharged.

**[7 CFR 761.404(b)] All parties liable for the debt must submit a complete application with the following exceptions:**

**(1) The applicable information required in § 761.405 can be provided by the administrator or executor of the Estate, heir, or other authorized person who can sign the debt settlement application; or compiled by FSA staff when a signature cannot be obtained.**

**(2) The debt may be settled when the borrower has no known assets or income from which collection can be made, has disappeared and cannot be located without undue expense, and there is no security remaining for the debt.**

**(3) In cases where the full amount of the unsecured debt cannot be collected in a reasonable time by legal action or through enforced collection proceedings, the Agency may consider a debt settlement offer submitted by a borrower without requiring a complete application. When evaluating these offers, the Agency will consider the likelihood of the debtor obtaining a larger income or additional assets, including inheritance prospects within 5 years, from which legal or enforced collection could be made.**

To use the authority in 761.404(b)(3), State Office must obtain OGC written concurrence. National Office concurrence is not needed.

For deceased debtors see subparagraph E.

For disappeared debtors see subparagraph F.

Use paragraph 405 and FSA-2732:

- when there is an authorized person who can sign for the debtor
- when the offer is a compromise payment according to 7 CFR 761.404(b)(3) but the debtor refuses to sign the form

Use paragraph 404 and FSA-2731 for all other situations.--\*



**\*--403 Types of Debt Settlement (Continued)**

**E Deceased Borrower/Debtor**

Settlement of a claim against an estate will be based on the recovery that may reasonably be expected, taking into consideration such items as the security, costs of administration, allowances of minor children and surviving spouse, allowable funeral expenses, and dower and courtesy rights, and specific encumbrances on the property having priority over claims of the Government.

Use FSA-2732 and paragraph 405 when debt settlement is requested by the administrator or executor of the Estate, heir, or other authorized person.

Use FSA-2731 and paragraph 404 in all other cases.

Notes: In general, to use FSA-2731 there must be no remaining security.

If an administrator or executor has not been appointed to settle the debtor's estate, there must be a determination/documentation that there is no reasonable prospect for recovery.

If an administrator or executor has been appointed to settle the debtor's estate, there must be a final determination made and confirmed by the probate court that the Government's claim was recognized properly and the Government has received all funds it was entitled to receive.

If there has not been a final settlement made and confirmed by the probate court, there must be no assets in the estate from which there is any reasonable prospect of recovery.

If there were assets in the estate from which recovery might have been made, the debt may still be canceled if OGC has advised in writing that the assets were disposed of or lost in a manner which precludes any reasonable prospect of recovery.--\*

**\*--403 Types of Debt Settlement (Continued)****F Disappeared Borrower/Debtor**

Use FSA-2731 and paragraph 404 when the debtor has no known assets or future debt-paying ability, has disappeared and cannot be found without undue expense, and there is no existing security for the debt.

Reasonable efforts will be made to locate the debtor. These efforts may include contacts, either in person or in writing, with postmasters, motor vehicle licensing and title authorities, telephone directories, city directories, utility companies, State and local governmental agencies, other Federal agencies, employees, friends, and credit agency skip locate reports, known relatives, neighbors and County Committee members.

Also, the debtor's loan file should be reviewed carefully for possible leads that may be of assistance in locating the debtor.

The efforts made to locate the debtor, including the names and dates of contacts, and the information furnished by each person, will be fully documented on FSA-2731.

**Notes:** Some efforts to locate the debtor would be considered an “undue expense” and are not necessary because they duplicate efforts made through Treasury’s cross-servicing program.

Debtor addresses should be maintained and updated according to 1-FLP, paragraph 46, 5-AS, paragraph 77, and 1-CM, paragraph 198. Unsecured debts should be sent to cross-servicing using the debtor’s most recent address.--\*

**\*--404 Cancellation Without Borrower/Debtor Signature (FSA-2731)--\***

**A Overview**

When cancellation of debt does not require borrower's signature, agency officials will cancel the debt using FSA-2731. Borrower signature is not required as follows:

- all debt returned from cross-servicing as uncollectible
- all debt returned from cross-servicing after paying compromise or adjustment offer (subparagraph C)
- obligor has been discharged of the debt under Chapter 7 bankruptcy or reorganization bankruptcy (Chapter 11, 12, or 13)

**Note:** A partial debt settlement may be appropriate in this case.

- obligor is deceased or defunct and there are no assets from which FSA can collect
- DOJ settlement negotiated instead of foreclosure or judgment, plea agreement, or the remaining balance of the debt is not covered by the judgment and determined by OGC to be legally without merit

**Note:** A partial debt settlement may be appropriate in this case.

- DOJ, Civil Division settlement because of prior debt forgiveness with outstanding principal of \$100,000 or greater (Exhibit 34)
- cancellation of judgment debt unless borrower requests cancellation according to paragraph 405
- OGC has determined that the debt is legally without merit
- partial debt settlement
- obligor signature cannot be obtained or has disappeared.

**\*--Note:** FSA-2731 may be used in conjunction with FSA-2732 for any borrower who is not required to submit a signed application.

For CFR procedure/authority references, see subparagraph 403D.--\*

**\*--404 Cancellation without Borrower/Debtor Signature (FSA-2731) (Continued)--\*****B Documentation Needed**

Except for debt returned from cross-servicing, (see subparagraph C) the following documentation is needed to cancel debt without borrower/debtor signature.

- FSA-2731 and the following, if applicable, for:
  - debts legally without merit, written OGC determination
  - deceased debtors (FSA-2490)
  - bankruptcy cases:
    - Chapter 7 – attach a copy of the “Discharge of Debtor” order(s) by the court for all obligors
    - Chapters 11, 12, and 13 unsecured claims:
      - organization plan (Chapter 11)
      - reorganization plan (Chapters 12 and 13)
      - confirmation order by the court confirming the plan
      - order completing the plan (a similar order)
      - written opinion by OGC that the confirming order has discharged the obligor(s) of liability for that part of the debt.

**Note:** See Exhibit 39 for completed examples of FSA-2731 and FSA-2731A.

**\*--404 Cancellation without Borrower/Debtor Signature (FSA-2731) (Continued)--\*****C CNC Debt Returned From Cross-Servicing**

Debt classified as CNC and returned from cross-servicing after Treasury has taken all appropriate collection actions shall be canceled.

| Step | Office       | Action  |
|------|--------------|---|
| 1    | State Office | <p><b>Cancellation</b></p> <p>The account balance shall be canceled when:</p> <ul style="list-style-type: none"> <li>• all of the loans eligible for referral to the cross-servicing program have been referred but returned for the debtor and any co-debtors</li> <li>• all payments have been received from any compromise or adjustment offers negotiated by Treasury.</li> </ul> <p>There are no collections that FSA could receive through AWG or Federal salary offset.</p> <p><b>Note:</b> Accounts on AWG or Federal salary offset returned in error by Treasury will be returned by the State Office for continued collection through DCIB.</p> <p>*--Canceling a debtor's account balance will be completed under the authorities set forth in this part and 7 CFR 761.403(b) as appropriate. Treasury's return of an account from cross-servicing as uncollectable will serve as documentation that the requirements of section 7 CFR 761.403(b) have been met.--* Neither a credit report nor further contact with the borrower is needed. If 1 or more of a debtor's loans have been canceled using the debt cancellation authority under FCCS, the remaining account balance may be canceled under this part. If a debtor has received debt forgiveness under CONACT authorities, such as a write-down through PLS, the remaining account balance may be canceled according to Exhibit 34.</p> |

## \*--404 Cancellation without Borrower/Debtor Signature (FSA-2731) (Continued)--\*

## C CNC Debt Returned From Cross-Servicing (Continued)

| Step        | Office                 | Action   |
|-------------|------------------------|--|
| 1<br>(Cntd) | State Office<br>(Cntd) | <p><b>Cancellation</b></p> <p>SED's shall:</p> <ul style="list-style-type: none"> <li>process the loan cancellation as appropriate using FSA-2731</li> </ul> <p><b>Note:</b> Documentation that all debt has been returned from cross-servicing as uncollectable will be attached to FSA-2731.</p> <ul style="list-style-type: none"> <li>prepare a memorandum advising DCIB of the cancellation</li> <li>FAX the signed memorandum to DCIB.</li> </ul> <p><b>Note:</b> The State Office shall obtain any necessary concurrence before canceling the debt.</p> <p>When canceling remaining loan balances owed on debts compromised by Treasury:</p> <ul style="list-style-type: none"> <li>document the information about the compromise on FSA-2731</li> <li>process transaction code "3K" using class of write off code "1" for the compromised debt</li> <li>process transaction code "3K" using class of write off code "4" for the balance of the debt returned as uncollectible</li> <li>the effective date for all 3K transactions shall be the date SED or DAFLP, as the Administrator's designee, signed FSA-2731.</li> </ul> |

## \*--404 Cancellation without Borrower/Debtor Signature (FSA-2731) (Continued)--\*

## C CNC Debt Returned From Cross-Servicing (Continued)

| Step | Office        | Action   |
|------|---------------|--|
| 2    | State Office  | <b>Repayment/Adjustment Offers and Compromise Offers</b>   |
|      |               | Will receive notification from DCIB once the full amount of the repayment/adjustment or compromise has been collected and applied to the debt.   |
|      |               | <b>Approved Cancellations</b>  |
|      |               | <ul style="list-style-type: none"> <li>Will provide DCIB a copy of FSA-2731 authorizing the cancellation in instances where cancellations cannot be processed by the State Office. This will enable DCIB to forward FSA-2731 to FaSB to process the cancellation.</li> <li>Will receive a memorandum from DCIB once the cancellation has been completed.</li> </ul>  |
| 3    | State Office  | <p>Attach NFAOC memorandums, State Office memorandums, and any applicable forms to the State Office copy of FSA-2720 or previous form.</p> <p>Forward a copy of the DCIB memorandum and any applicable forms to FLM.</p>   |
| 4    | County Office | <p>File NFAOC memorandums, State Office memorandums, and any applicable forms in the case file.</p> <p>After all payments have been processed, stamp the promissory notes “Satisfied by Completed Adjustment Offer”, “Satisfied by Approved Compromise”, or “Satisfied by Approved Cancellation”, as applicable, and return the satisfied notes to the borrower.</p> <p>Continue monitoring the account in cases where the debt is returned as uncollectible but is not or cannot be canceled at that time. Once a determination is made to cancel, or it becomes eligible for cancellation, proceed to process the cancellation according to this part and Exhibit 34, as applicable.</p> |

**405 Debt Settlement Requested by Borrower/Debtor (FSA-2732)****A Information Needed**

**\*--[7 CFR 761.405(a)] A borrower requesting debt settlement must submit complete and accurate information from which the Agency can make a full determination of the borrower's financial circumstances and repayment ability. Except for the situations listed in § 761.404(b), each liable party, must submit the following:**

- (1) One completed original debt settlement application on the applicable Agency form signed by all parties liable for the debt;**
- (2) A current financial statement;**
- (3) A cash flow projection for the next production or earnings period;**
- (4) Verification of employment or other earned income, including verification of a nondebtor spouse's income which will be included as available to pay family living expenses;**
- (5) Verification of assets including, but not limited to, cash, checking accounts, savings accounts, certificates of deposit, individual retirement accounts, retirement and pension funds, mutual funds, stocks, bonds, and accounts receivable;**
- (6) Verification of debts greater than \$1,000;**
- (7) Copies of complete Federal income tax returns for the previous 3 years; and**
- (8) Any other items requested by the Agency to evaluate the debtor's financial condition.--\***

Each debtor/co-debtor requesting debt settlement must submit the following:

- FSA-2732
- FSA-2735
- FSA-2037, or other balance sheet, or current financial statement

**Note:** A household may submit a joint balance sheet.

- FSA-2038, or other business plan projection, if operating a business
- FSA-2004
- FSA-2005
- FSA-2015, or other written verification for all:
  - debts greater than \$1,000
  - bank or other financial institution records for the past 12 months
- verification of assets including, but not limited to, certificates of deposit, individual retirement accounts, retirement and pension funds, mutual funds, stocks, bonds, and accounts receivable.



**405 Debt Settlement Requested by Borrower/Debtor (FSA-2732) (Continued)****A Information Needed (Continued)**

- FSA-2014, or other written verification of non-farm income

**Note:** Verification of a non-debtor spouse income is also needed for consideration in meeting family living expenses.

- Federal income tax returns for the last 3 years
- other information required to obtain a clear understanding of each borrower's financial condition.

**\*--Notes:** FSA-2731 may be used in conjunction with FSA-2732 for any borrower/debtor not required to submit a signed application.

For accounts where the last remaining liable debtor is deceased and the FSA-2490 indicates that FSA will be filing a claim, the applicable information needed for debt settlement can be provided by the administrator or executor of the Estate, heir, or other authorized person who can sign FSA-2732. FSA-2490 will be attached to FSA-2735 or FSA-2732.

**Exception:** According to 7 CFR 761.404(b)(3) in cases where the full amount of the unsecured debt cannot be collected in a reasonable time by legal or enforced collection proceedings, FSA may consider a debt settlement offer submitted by a borrower without requiring complete financial information. OGC written concurrence must be obtained in these cases. However, National Office concurrence is not needed. See subparagraph 403 D.--\*

**B Continued Collection**

Borrowers may request debt settlement before the debt is referred to Treasury's cross-servicing program (Part 8) pursuant to 7 CFR part 3 and 31 CFR part 285.

**\*--DCIA and the CONACT** provide specific timeframes during which a borrower can request debt settlement. They are listed in subparagraph 408 A. When borrowers apply for debt settlement during those timeframes, FSA generally suspends the next pending collection action so the application can be considered.

When an application is submitted outside of those timeframes, it does not prevent, suspend, or delay collection activities required by the CONACT or DCIA, including but not limited--\* to administrative offset, and salary offset. These collections will continue while FSA verifies and reviews the financial information submitted with the debt settlement request.

**405 Debt Settlement Requested by Borrower/Debtor (FSA-2732) (Continued)**

**\*--C Debt That Can Be Settled**

See paragraph 402

**D Eligible Debtors**

**[7 CFR 761.404(a)] A borrower is eligible for debt settlement if the borrower:**

**(1) Meets the requirements for the particular type of debt settlement under this part (paragraph 403); and**

**(2) Submits a complete application for debt settlement as specified in § 761.405 (subparagraph 405A).**

**[7 CFR 761.404(c)] A borrower is not eligible for debt settlement if:**

**(1) The borrower is indebted on another active FLP loan that the borrower cannot or will not debt settle; or**

**(2) The debt has been referred to the OIG, OGC, or Justice because of suspected civil or criminal violation, unless investigation was declined or advice was provided that the debt can be canceled, compromised, or adjusted.**

**E CFR**

For CFR procedure/authority references to use on FSA-2733, item 4B, see paragraph 403.--\*

## 406 Review Timeframes and Responsibilities

### A FLM

Within 30 days, **FLM** will review all relevant information and forward to DD, a debt settlement package containing the following:

- memorandum with FLM's recommendation
- FSA-2732 and any applicable forms:
  - FSA-2735
  - FSA-2737
  - FSA-2731 for co-debtors who are not required to sign FSA-2732 and FSA-2735
  - FSA-2490 for deceased borrowers
  - FSA-2080 for release of liability.

**Note:** Any related release of liability, such as a withdrawing joint obligor, must be approved using FSA-2080, and the transaction must be correctly processed **before** processing any approved debt settlement. This will ensure that the withdrawing joint obligor does not receive IRS Form 1099-C. For additional information, see \*--4-FLP, Part 8; 4-FLP, paragraphs 231 and 251; and 5-FLP, paragraph 84.--\*

- FSA-2733 and supporting documentation, including asset investigation

**Note:** Exhibit 35 may be used as an optional guide to document asset investigation and/or search (Item #14A on FSA-2733).

- relevant and applicable servicing office files.

### B DD

Within 30 calendar days of receiving the debt settlement package, or within 60 calendar days of the borrower submitting all needed information (whichever is less), the **DD** will:

- review the case file
- sign FSA-2733
- forward the debt settlement package to the State Office.

**406 Review Timeframes and Responsibilities (Continued)****C State Office**

Within 30 days of receiving the debt settlement package, or within 90 days of the borrower submitting all needed information (whichever is less):

- **FLP State Office Review Official and Farm Loan Chief** will review the debt settlement package and sign FSA-2733, before it is presented to SED
- the **SED** will sign all applicable forms and letters to:
  - approve the borrower's request for debt settlement, or
  - deny/reject the borrower's request and provide appeal rights, or
  - recommend the debt settlement be approved by the Administrator or DOJ.

**D Referrals to DOJ and FLP National Office**

Referrals to:

- DOJ will be processed according to Exhibit 34
- DAFLP to use the Administrator's approval authority will include:
  - the memorandum from SED recommending approval
  - the debt settlement package
  - a legal opinion from the Regional Attorney addressing the statute of limitations, if applicable
  - any additional information requested by DAFLP and/or the Administrator.

**407 Borrower Repayment Ability****A Maximum Amount**

A borrower's offer to debt settle must represent the maximum amount that FSA determines the borrower can pay based on:

- a review of the borrower's financial circumstances (subparagraph B), and
- the largest amount that is likely to be recovered through enforced collection (subparagraph C).

**B Acceptable Offer**

The acceptability of a debt settlement offer will be based on the requirements in this part, a  
\*--review of the information provided in paragraph 405, and the following.

- Statement of indebtedness owed on any prior liens. Statements will be retained in the debtor's file.
- Value of existing security as determined by a current appraisal made or obtained by the Agency. The appraisal will be retained in the debtor's file.
- Debtor's total present income and probable sources, amount and stability of income over the next 5 years.
- Amount of debtor's other debts.
- Amount of debtor's essential family living expenses, and farm or business operation expenses necessary to continue the operation, if applicable.
- Age and health when the debtor is largely depending on income from an occupation where manual labor is required.
- Size of debtor's family, their ages and health.
- Value of debtor's assets in relation to debts and liens of third parties. Reasonable equity in a modest nonsecurity homestead occupied by the debtor will not be considered as available for settlement. Nonsecurity property in excess of minimum family living needs which is not exempt from levy and execution should be considered in determining the debtor's ability to pay.--\*

**407 Borrower Repayment Ability (Continued)****B Acceptable Offer (Continued)**

Every debtor's circumstances are different. However, in cases where debtors have difficulty providing specific documentation for expenses, the following links may be helpful as an optional guide:

- <http://www.irs.gov/Individuals/Collection-Financial-Standards>
- <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Local-Standards-Transportation>
- <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Local-Standards-Housing-and-Utilities>
- <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/National-Standards-Food-Clothing-and-Other-Items>.

**C Determining Largest Enforced Collection Amount**

The largest enforced collection amount is as follows.

FSA equity in the security

+ (plus)

Amount that could likely be collected through:

cross-servicing (Part 8)

AWG (Part 9)

Federal salary offset (Part 5)

TOP (Part 4)

When a debt settlement offer is submitted, the authorized Agency official will:

- determine if the debt settlement amount offered is more than what would likely be collected through enforced collection
- \*--make a decision or recommendation to debt settle.--\*

**407 Borrower Repayment Ability (Continued)****D Negotiating Settlement**

Debtors have the right to make voluntary settlement offers in any amount should they elect to do so.

When negotiating a settlement, the following will be discussed to assist the debtor:

- repayment ability and a debt settlement amount (subparagraph B) that is based on the financial documentation (subparagraph 405 A)
- types of settlement (paragraph 403)
- if collection is likely through cross-servicing, the 20-30 percent collection fee charged by Treasury and its PCA's
- any other relevant information such as unaccounted for security
- in cases where the account has been accelerated and all security has been liquidated, for adjustment offers the payments will be applied to principle before interest.

**Note:** See subparagraph 409 E for additional information about adjustment payments--\*

## 408 Approval and Rejection

### A Approval/Rejection Authority

SED's may delegate to FLC, FLS, DD, FLM, and/or SFLO the authority to reject debt settlement requests only in cases where debtors do not provide all necessary documentation/information. Appeal rights must be provided with the rejection letter.

SED may approve or reject:

- cancellations of accounts where all obligors are properly included on FSA-2731 or were previously released using FSA-2080, without regard to the size of the debt, unless there was a previous debt forgiveness

**Note:** For previous debt forgiveness, see Exhibit 34.

- proposed debt settlements that require using FSA-2732 (with or without FSA-2731) when the outstanding balance of the indebtedness involved in the settlement, less the amount of any compromise or adjustment offer, is less than \$1 million, including principal, interest, and other charges.

The Administrator or designee must approve or reject debt settlements that require using FSA-2732 (with or without FSA-2731) when the outstanding balance of the indebtedness involved in the settlement, less the amount of any compromise or adjustment offer, is \$1 million or more, including principal, interest, and other charges.

When FSA-2731 is used with FSA-2732, the settlement code for the account (3K transaction) will be for the settlement approved on FSA-2732. Settlement of the debt will be approved on FSA-2732.

\*--CONACT and DCIA notification letters generally allow borrowers to apply for debt settlement within 30 or 60 days as follows:

- FSA-2510 and FSA-2514 provide 60 days
- FSA-2716 provides 30 days
- Exhibit 7 due process letter to refer debt to Treasury provides 60 days.

If an incomplete debt settlement application is submitted in response to the above forms, the authorized agency official will notify the borrower how many days remain for the borrower to submit the missing information according to the applicable timeframes. And based on the information that was submitted, may authorize up to an additional 30 days to submit the needed information or a new/revised offer depending on the circumstances of the case.--\*



## 408 Approval and Rejection (Continued)

### B Approval Processing and Notification

The approval official will execute completed FSA-2731 or FSA-2732 and FSA-2737, whichever is applicable, and will process the forms according to each of the form's \*--instructions. If a "Compromise", "Adjustment", or "Bankruptcy" is involved, FaSB must process FSA-2731 or FSA-2732. The State Office will process Chapter 7 bankruptcy cases when there is no remaining security.

The adjustment or reorganization bankruptcy amount is created by FaSB into a new loan number with a 1M transaction. FaSB will also flag the account SAA.

For adjustments:

- The effective date of the 1M will be the earlier of the date of approval as indicted on FSA-2732, or the payment date if a payment was submitted with the offer.
- \*--Interest will accrue based on the Promissory Note interest rate from which the adjustment account was created.
- Payments will be established based on the approved adjustment agreement and as stated on FSA-2732.

For reorganization bankruptcies interest will accrue and payments will be established as directed by the court order.

For all compromise and adjustment offers:

- the specific amount and terms of the offer will be stated on the FSA-2732
- the accounts settled will be identified by reference to the accounts shown on FSA-2732.

When using FSA-2732, the approval official will send FSA-2737. If approved, the FSA-2732 will provide the estimated amount that will be reported to IRS according to 26 U.S.C. 6050P; and 26 CFR 1.6050 P-1. However, adjustment offers will not be reported until after the final payment is applied.--\*

Once the debt settlement is approved, the servicing official will ensure that the account is removed from internal administrative offset, TOP, and cross-servicing, as applicable.

**408 Approval and Rejection (Continued)****C Requesting Additional Information**

If rejection appears to be necessary because of a lack of information, or because the amount offered is inadequate, SED may request that the employee in charge of the account obtain additional information or make an effort to obtain an acceptable offer, as appropriate under \*--the circumstances. Rejection of an offer will be withheld in these cases for a maximum of 30 days to allow the debtor to submit information or a new offer. However, according to paragraph 405 B, submission of a debt settlement offer after the timeframes listed in paragraph 408 A will not prevent, suspend, or delay collection activities required by DCIA or the CONACT. All settlement offers will be handled according to the timeframes in paragraphs 406 and 408 A.--\*

**D Rejection Processing and Notification**

The authorized official in subparagraph A will insert the reasons for rejection on FSA-2737 and sign and date FSA-2732 and FSA-2737.

The servicing official will:

- retain the original FSA-2732 and a copy of FSA-2737
- return case files and copies of FSA-2732 and FSA-2737 to the employee in charge of the account
- request FaSB to return any adjustment or compromise payment held by NFAOC to the borrower, in care of the employee in charge of the account
- return any adjustment or compromise payment held by the State Office to the borrower, in care of the employee in charge of the account:
  - send FSA-2737 to the debtor
  - provide appeal rights according to 1-APP using FSA-2737.

**E Unauthorized Approval**

If unauthorized approval of a debt settlement is identified, the settlement application with supporting documentation should be forwarded to the correct approval official provided in subparagraph A for post approval. If the debt settlement cannot be post-approved, the correct approval official will provide additional guidance on servicing the account.

## 408 Approval and Rejection (Continued)

**F Requesting Exception Authority for Debt Settlement**

**\*--[7 CFR 761.408] Administrator authority. On an individual case basis, the Agency may consider granting an exception to any requirement of this part if:**

- (a) The exception is not inconsistent with the authorizing statute or other applicable law; and**
- (b) The Agency's financial interest would be adversely affected by acting in accordance with this part and granting an exception would resolve or eliminate the adverse effect upon its financial interest.--\***

SED must submit an exception request by e-mail to DAFLP at **SM.FSA.DCWa2.AdmException** or **adminexception@wdc.usda.gov**. The e-mail subject should read “Administrator’s Exception to (7-FLP, paragraph (include paragraph number)) – (Borrower’s Name and State)”. An attachment must fully describe the status of the account, including the following:

- a brief background on the case
- total outstanding FSA indebtedness, loan types, and amounts
- current status of the account

**Note:** If the account is delinquent, where is it in PLS?

- type of security (chattel or real estate) and value
- prior liens
- proposed plan of action that warrants the exception request
- what procedure is to be waived
- the adverse effect to FSA resulting from compliance with the regulation and how it would be eliminated or minimized through the exception
- how the action is in the best financial interest of the Government
- additional information SED thinks is needed to review the case.

\* \* \*

**409 Payments and Servicing - Approved FSA-2732****A Payments**

Debtors must submit compromise and lump sum payments within 45 days calendar of being notified that their debt settlement offer was approved.

Once the borrower complies and makes all payments as agreed under the approved adjustment offer, all remaining loan balances, if any, will be canceled with a 3K, CWC, 2 transaction.

**B Failure to Pay**

**\*--[7 CFR 761.407] (a) Failure to pay any compromise amount approved by FSA by the date agreed will result in cancellation of the compromise agreement.**

**(b) Failure to pay debt adjustment amounts approved by FSA by the dates agreed will result in cancellation of the adjustment agreement.**

**(c) A debtor who has entered into an agreement under this subpart (Part 12) may request that FSA extend a repayment date for 90 days. The debtor must provide information that supports the basis for the request at the time the request is made.**

**(d) If a debtor is delinquent under the terms of an adjustment agreement and FSA determines the debtor is likely to be financially unable to meet the terms of the agreement, the existing agreement may be cancelled and the debtor may be allowed to apply for a different type of settlement more consistent with the debtor's repayment ability.**

**(e) If an agreement is cancelled, any payments received will be retained as payments on the debt owed.**

Failure to pay any compromise or adjustment amount approved by the Agency by the date(s) agreed will result in cancellation of the agreement with appeal rights under 1-APP.

SED's may delegate to FLC, FLS, DD, FLM, and/or SFLO authority to cancel delinquent adjustment agreements--\*

**409 Payments and Servicing - Approved FSA-2732 (Continued)**

\* \* \*

**C Promissory Notes**

The notes will be returned to the debtor or to the debtor's legal representative when:

- cancellation is processed using FSA-2732
- all payments have been made as agreed in compromise and adjustment cases.

The original and copies of notes will be stamped “Satisfied by Approved Compromise,” “Satisfied by Approved Cancellation,” or “Satisfied by Completed Adjustment Offer.” Security instrument(s) will be released of record according to State law.

When FSA-2731 is used, the notes will be placed in the debtor's case file. However, if the debtor requests the notes, they may be stamped “Satisfied By Approved Cancellation” and returned.

In case of a transfer of security with assumption for less than the debt, the promissory note will be attached to the assumption agreement covered by the note and kept in the transferee's file.

**D Restrictive Notations**

Checks or check transmittal letter containing restrictive notations such as “Settlement in full” or “Payment in full,” or in those exceptional instances when the debtor refuses to sign the FSA-2732 in connection with a compromise offer, will be forwarded to the State Office where they will be retained until approval or rejection of the offer. The use of restrictive notations will be discouraged to the fullest extent possible.

**409 Payments and Servicing - Approved FSA-2732 (Continued)****E NFAOC Handling**

\*--All payments received with an FSA-2732 will be held in the Deposits Fund Account by the Finance Office until notification is received from the State Office of the approval or rejection of the offer.

In cases of approved offers, remittances will be applied in accordance with established policies, beginning with the oldest loan included in the settlement, except that when the request for settlement includes loans made from different revolving funds the Finance Office will prorate the amount received, on the basis of the total principal balance due the respective revolving funds.

Upon notification of a rejection of a debtor's offer and receipt of a request from the State Director for a refund, the Finance Office will refund to the debtor, in care of the employee in charge of the account, the amount held in the Deposits Fund Account representing a rejected compromise or adjustment offer.

**[7 CFR 761.403(e)] If an FLP loan has been accelerated and all security has been liquidated, and the agency has approved an adjustment debt settlement offer in accordance with this subpart (7 CFR 761 subpart F), voluntary payments and involuntary payments (such as offsets) will be applied in the following order, as applicable:**

- (1) Recoverable costs and protective advances plus interest;**
- (2) Loan principal;**
- (3) Deferred non-capitalized interest;**
- (4) Accrued deferred interest; and**
- (5) Interest accrual to date of payment.**

**Note:** The above application of payments for approved adjustments does not apply to the repayment agreements in subparagraph 23 D. The subparagraph 23 D agreements are processed using FSA-2732 as adjustments for the full amount of the debt. However, they are approved using the authority in 7 CFR 3.16, not 7 CFR 761 subpart F.--\*

## Reports, Forms, Abbreviations, and Redelegations of Authority

### Reports

None.

### Forms

This table lists the forms referenced in this handbook.

| Number   | Title  | Display Reference | Reference                      |
|----------|--|-------------------|--------------------------------|
| FSA-2004 | Authorization to release Information   |                   | 405                            |
| FSA-2005 | Creditor List  |                   | 405                            |
| FSA-2014 | Verification of Income   |                   | 405                            |
| FSA-2015 | Verification of Debts and Income   |                   | 405                            |
| FSA-2037 | Farm Business Plan Worksheet Balance Sheet   |                   | 62, 405, Ex. 8                 |
| FSA-2038 | Farm Business Plan Worksheet Projected/<br>Actual Income and Expense   |                   | 62, 405, Ex. 8                 |
| FSA-2065 | Annual Statement of Loan Account   |                   | 224                            |
| FSA-2080 | Release From Personal Liability  |                   | 401, 406, 408                  |
| FSA-2490 | Deceased Borrower Report   |                   | 404, 405, 406                  |
| FSA-2510 | Notice of Availability of Loan Servicing to<br>Borrowers Who Are 90 Days Past Due  |                   | 408                            |
| * * *    | * * *  |                   | * * *                          |
| FSA-2514 | Notice of Availability of Loan Servicing to<br>Borrowers Who are in Non-Monetary Default   |                   | 408                            |
| FSA-2701 | Notice of Intent to Collect by Administrative<br>Offset  |                   | 22, 62, 107,<br>202, Ex. 8, 13 |
| FSA-2702 | Notice of Intent to Collect by Administrative<br>Offset for Non-Borrower Entity  |                   | 22, 62, 107,<br>202            |
| FSA-2703 | Notice to Debtor That Administrative Offset<br>Has Been Exercised and Intent to Collect by<br>Administrative Offset                            |                   | 22, 62, 202                    |
| FSA-2704 | Notice to Debtor That Administrative Offset<br>Has Been Exercised and Intent to Collect by<br>Administrative Offset for Non-Borrower<br>Entity |                   | 22, 62, 202                    |
| FSA-2707 | Alternative Repayment Agreement for<br>Administrative Offset or TOP  |                   | 62, Ex. 8                      |
| FSA-2710 | Notification of Salary Offset  |                   | 22, 134, 135,<br>Ex. 8         |
| FSA-2711 | Alternative Repayment Agreement for<br>Federal Salary Offset   |                   | 134, 135, Ex.<br>8             |

## Reports, Forms, Abbreviations, and Delegations of Authority (Continued)

## Forms (Continued)

| Number          | Title   | Display Reference | Reference                       |
|-----------------|---|-------------------|---------------------------------|
| FSA-2716        | Notice Advising of Potential Referral to Treasury for Cross-Servicing and the Availability of Debt Settlement |                   | 22, 201, 202, 242, 408          |
| FSA-2717        | Notice Advising of Potential Referral to Treasury for Cross-Servicing   |                   | 22, 201, 202, 242               |
| FSA-2720        | Checklist for “Currently Not Collectible” Debt  |                   | 202, 221, 223, 353, 404         |
| FSA-2721        | List of Currently Not Collectible (CNC) Debts Eligible To Be Referred to Treasury for Cross-Servicing         |                   | 104, 223, 226, 353              |
| FSA-2722        | Update to TOP and Cross-Servicing Information   |                   | 104, 105, 106, 222, 223, Ex. 19 |
| FSA-2723        | TOP Delete Only   |                   | 104, 105                        |
| FSA-2727        | Youth Loan (YL) Debt Forgiveness  |                   | 401                             |
| FSA-2731        | Cancellation of Debt Without Application  | Ex. 39            | Text, Ex. 34                    |
| FSA-2731A       | Cancellation of Debt Without Application (Continuation)   | Ex. 39            | 404                             |
| FSA-2732        | Debt Settlement Application   |                   | Text, Ex. 34, Ex. 39            |
| FSA-2733        | Review, Certification and Recommendation on Debt Settlement Application                                       |                   | 405, 406                        |
| FSA-2735        | Household Income and Expense Worksheet  |                   | 405, 406                        |
| FSA-2737        | Notice Advising of Decision on Debt Settlement Applications   |                   | 406, 408                        |
| IRS Form 1098   | Mortgage Interest Statement   |                   | 224                             |
| IRS Form 1099-C | Cancellation of Debt  |                   | 406                             |



# Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

## Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

| Approved Abbreviation | Term  | Reference  |
|-----------------------|---|--|
| ARA                   | alternative repayment agreement             | 23, 63, 107, 134, 241, 244, Ex. 8, 13, 29        |
| AWG                   | administrative wage garnishment             | Text, Ex. 2, 7, 8, 29                            |
| BAP                   | bankruptcy action pending                   | 104, Ex. 18, 19                                  |
| CAP                   | court action pending                        | 106  |
| CNC                   | currently not collectible                   | Text   |
| CONACT                | Consolidated Farm and Rural Development Act | 1, 21, 401, 402, 403, Ex. 34                     |
| CSNG                  | Cross-Servicing Next Generation             | 224, 225, 226, 245, 248                          |
| DCIB                  | Debt Collection Improvement Branch, NFAOC   | 101, 104, 106, 222, 223, 224, 226, 247, 353, 403 |
| DMS                   | debt management service                     | 224, 226   |
| ECM                   | Enterprise Content Management               | 104, 106, 222, 223, 226, 353                     |

## Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

## Abbreviations Not Listed in 1-CM (Continued)

| Approved Abbreviation | Term  | Reference  |
|-----------------------|---|--|
| FAP                   | foreclosure action pending  | 106, Ex. 19, 20                                  |
| FaSB                  | Farm Service Branch, NFAOC  | 104, 107, 247, 404, 408                          |
| FCCS                  | Federal Claims Collection Standards   | Text, Ex. 2, Ex. 8, Ex. 34                       |
| FmHA                  | Farmer's Home Administration  | Ex. 20   |
| FSAFS                 | FSA Financial Services software   | 61, 81   |
| NFAOC                 | National Financial and Accounting Operations Center   | Text, Ex. 8, Ex. 20                              |
| PCA                   | Private Collection Agency   | 221, 223, 224, 241-243, 245, 248, 407, Ex. 2, 29 |
| PLS                   | primary loan servicing  | Text, Ex. 8                                      |
| SAA                   | subject to approved adjustment<br><br><b>Note:</b> When reference is made to the financial "flag"/designation for an account where FSA has approved a borrower's debt settlement offer as documented on FSA-2732. | 104, 401, 408, Ex. 18                            |
| SOL                   | statute of limitations  | 24   |
| TPJ                   | third party judgment  | 104, 223, 353                                    |
| YL                    | youth loan  | Ex. 2  |

## Redelegations of Authority

| Redelegation   | Reference |
|--|-----------|
| SED's may delegate to FLC, FLS, DD, FLM, and/or SFLO the authority to:   |           |
| <ul style="list-style-type: none"> <li>reject debt settlement requests in cases where debtors do not provide all necessary documentation/information.</li> </ul> | 408       |
| <b>Note:</b> Appeal rights must be provided with the rejection letter.   |           |
| <ul style="list-style-type: none"> <li>cancel delinquent adjustment agreements.</li> </ul>   | 409       |

## Definitions of Terms Used in This Handbook

**\*--Note: Definitions in bold are from 7 CFR 761.2 unless otherwise noted.--\***

### **Acceleration**

Acceleration is a demand by a lender for immediate repayment of the entire balance of a debt if the security instrument or promissory note is breached. When FSA accelerates an account, the entire loan balance is due in 30 calendar days.

**\*--Account – from 7 CFR 3.3**

**Account** means a record of transactions involving the debt, claim, or loan for a particular person or entity, including the name, address, taxpayer identification number, other information necessary to establish the person's or entity's identity, the balance, status, history of the debt, and program under which the debt or claim arose.

### **Adjustment**

Adjustment means the settlement of an FLP debt for less than the total amount owed. The adjusted amount is collected through a series of payments that are scheduled over time. An adjustment is not a final settlement until all scheduled payments have been made. After applying all payments pursuant to the adjustment agreement, any remaining balance is canceled. The amount canceled is reported to the IRS pursuant to § 3.90 of this title and applicable IRS requirements.

**Administrative charges – from 7 CFR 3.3**

**Administrative charges** means the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, and costs of selling collateral or property to satisfy the debt.

**Administrative offset – from 7 CFR 3.3**

**Administrative offset** means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt. This definition is consistent with 31 U.S.C. 3701(a)(1).--\*

### **Administrative Wage Garnishment (AWG)**

AWG is a garnishment program used to collect delinquent nontax Federal debt from borrowers who have private sector jobs. AWG is:

- authorized by DCIA
- administered by Treasury.

**Definitions of Terms Used in This Handbook (Continued)****\*--Agency – for general purposes**

Agency is the Farm Service Agency (FSA), including its employees, State and area committee members, and any successor Agency.

**Agency – for DCIA purposes, from 7 CFR 3.3**

Agency means an agency, office, or corporation within USDA subject to the authority or general supervision of the Secretary.

**Agency Official**

Agency official is any employee within FSA. This term is used when the action does not require inherent or delegated authority.

**Alternative Repayment Agreement**

**Alternative repayment agreement is a written repayment agreement accepted by both the borrower and the Agency as specified in §§ 3.42(b) (Parts 3 and 4) and 3.80 (Part 5) of this title. The agreement may allow for payments to be made from the borrower to the Agency as an alternative to collecting the payment amounts through administrative offset, or Federal salary offset.--\***

**Approval Official**

Approval official is the specific employee who has the authority to approve or deny the described action.

**Authorized Agency Official**

Authorized agency official is an employee who has either inherent or delegated authority to complete the described action.

**Automatic Stay**

Automatic stay refers to the prohibition of collection activities against the debtor or efforts to obtain possession of the debtor's property or security interest in the debtor's property during the course of bankruptcy.

**Bankruptcy Trustee**

A Bankruptcy Trustee is a court-appointed person who oversees execution of the confirmed bankruptcy plan. A trustee is less frequently used in Chapter 7 and Chapter 11 bankruptcies than in Chapter 12 and 13 bankruptcies.

## Definitions of Terms Used in This Handbook (Continued)

**Borrower (or Debtor)**

**Borrower (or debtor)** is an individual or entity that has an outstanding obligation to the Agency or to a lender under any direct or guaranteed FLP loan, without regard to whether the loan has been accelerated. The term “borrower” includes all parties liable for such obligation, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed, sold or conveyed, or who have been discharged of all such obligations owed to the Agency or guaranteed lender.

**\*--Borrower (or Debtor) – for DCIA purposes, from 7 CFR 3.3**

**Borrower and debtor** have the same meaning and refer to a person who owes a delinquent, nontax debt to the United States.

**Cancellation**

**Cancellation** means the final resolution of an FLP debt without receiving payment in full. Any amounts still owed, after applying payments in accordance with approved adjustment and compromise agreements, is canceled. The amount canceled is reported to the IRS pursuant to § 3.90 of this title and applicable IRS requirements.

**Centralized Administrative Offset – from 7 CFR 3.3**

**Centralized administrative offset** means referral of a debt to the Treasury Offset Program (TOP) to collect debts that creditor agencies have certified pursuant to 31 U.S.C. 3716(c), 3720A(a), and applicable regulations for offset of payments made to a debtor by Federal agencies other than USDA. Centralized offset also includes offset of payments made by States pursuant to 31 U.S.C. 3716(h) and 31 CFR 285.6.--\*

**Certified Mail**

**Certified mail** is a delivery service offered by USPS that allows the sender proof of mailing, as well as proof of delivery.

**Notes:** Certified mail service provides the following:

- electronic verification that an article was delivered or delivery attempt was made

**Note:** If the item was delivered, the electronic verification provides the date, time, and location of delivery.

- proof of delivery record (copy of the recipient’s signature) that is kept at the post office for 2 years after mailing. If needed, the signature proof can be requested after mailing by purchasing the “Return Receipt After Mailing” service.

“Return Receipt” is an additional feature that may be purchased but is **not** required.

## Definitions of Terms Used in This Handbook (Continued)

### Chapter 7

A Chapter 7 bankruptcy involves liquidation of the debtor's assets. The proceeds from liquidation are applied to the court-allowed debt.

### Chapter 11

A Chapter 11 bankruptcy is a business reorganization form of bankruptcy. The debtor has an exclusive right to file a reorganization plan within 120 calendar days after filing for bankruptcy. After the 120-calendar-day period, the debtor loses the exclusive right to file a reorganization plan, and others may file a plan. This chapter is generally discharged at closing. The plan does not have to be concluded within a specific timeframe.

### Chapter 12

A Chapter 12 bankruptcy provides special debt repayment relief for family farmers and family fishermen. This chapter is targeted to family farmers with 50 percent of gross income from farming. The farmer's debt must not exceed \$3.237 million and 80 percent of the farmer's debts must originate from farming. The debtor must file a plan within 90 calendar days after the First Meeting of Creditors. The court determines the point of discharge (usually at the end of the third or fifth year). The reorganization plans must be paid out in 5 years.

### Chapter 13

A Chapter 13 bankruptcy involves reorganization for wage-earners. The debtor must have regular income. A portion of that income will be set aside for distribution to creditors by the trustee. The plan is generally filed at time of petition and must be paid out in 5 years. The court determines the point of discharge, which is usually at the end of the third or fifth year.

### Chattel Security

**Chattel security is property that may consist of, but is not limited to: Crops; livestock; aquaculture species; farm equipment; inventory; accounts; contract rights; general intangibles; and supplies that are covered by financing statements and security agreements, chattel mortgages, and other security instruments.**

**Definitions of Terms Used in This Handbook (Continued)****Civil Action**

**Civil action** is a court proceeding to protect the Agency's financial interests. A civil action does not include bankruptcy and similar proceedings to impound and distribute the bankrupt's assets to creditors, or probate or similar proceedings to settle and distribute estates of incompetents or decedents, and pay claims of creditors.

Civil action may include obtaining possession of property from borrowers or third parties, judgments on indebtedness evidenced by notes or other contracts or judgments for the value of converted property, or judicial foreclosure.

**\*--Claim and debt – from 7 CFR 3.3**

**Claim and debt** have the same meaning and refer to an amount of money, funds, or property that has been determined by an agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

**Closed**

Closed usually refers to when the bankruptcy plan has been paid in full, the security has been fully accounted for or remanded back to the creditor and proceeds distributed according to the bankruptcy. However, the bankruptcy is not closed until the bankruptcy judge closes the case with an order. Normally, collection activities or attempts to sell or gain possession of security cannot resume until the bankruptcy is closed.

**Compromise – for 7 CFR 761 Subpart F purposes (Part 12)**

**Compromise** is the settlement of an FLP debt or claim by a lump-sum payment of less than the total amount owed in satisfaction of the debt or claim.

**Compromise – for 7 CFR 3.3 and FCCS purposes**

**Compromise** means the settlement or forgiveness of a debt under 31 U.S.C. 3711, in accordance with standards specified in FCCS and applicable federal law.

**Conservation loan**

**Conservation loan** means a loan made to eligible applicants to cover the costs to the applicant of carrying out a qualified conservation project.--\*

**Conveyance**

Conveyance is a method of liquidation by which the borrower transfers title of the security property to the lender.

**Definitions of Terms Used in This Handbook (Continued)****\*--Creditor agency – from 7 CFR 3.3**

**Creditor agency** means a Federal agency or USDA agency to which a debtor owes a debt, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to collection of the debt.

**Cross-Servicing – from 7 CFR 3.3**

**Cross-servicing** means the centralized collection of Federal debt and the various collection actions taken by Treasury on behalf of a Federal agency in accordance with the provisions of 31 U.S.C. 3711, 31 U.S.C. 3720D, 31 CFR part 285, and other Treasury regulations. Cross-servicing includes, but is not limited to, the use of debt collection centers and private collection contractors.

**Note:** Cross-servicing is required by DCIA and is also referenced in FCCS regulations at 31 CFR 901.1(e).

**Debt – from 7 CFR 3.3**

**Debt** means an amount of money, funds, or property that has been determined by an agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

**Debt Collection Center – from 7 CFR 3.3**

**Debt collection center** means the Treasury or other government agency or division, designated by the Secretary of the Treasury with authority to collect debt on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).--\*



## Definitions of Terms Used in This Handbook (Continued)

### Debt Forgiveness

**\*--Debt forgiveness means the reduction or termination of a debt under the Act in a manner that results in a loss to the Agency, through:**

- (i) (A) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;
- (B) Cancellation of remaining amounts owed after compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981;
- (C) Paying a loss pursuant to 7 U.S.C. 2005 on a FLP loan guaranteed by the Agency;
- (D) Discharging a debt as a result of bankruptcy; or
- (E) Releases of liability which result in a loss to the Agency.
- (ii) Debt forgiveness does not include:
  - (A) Debt reduction through a conservation contract;
  - (B) Any writedown provided as part of the resolution of a discrimination complaint against the Agency;
  - (C) Prior debt forgiveness that has been repaid in its entirety;
  - (D) Consolidation, rescheduling, reamortization, or deferral of a loan; and
  - (E) Forgiveness of YL debt, due to circumstances beyond the borrower's control.

The Agency will use the criteria in 7 CFR 766.104(a)(1) to determine if the circumstances were beyond the borrower's control.

### Debtor – from 7 CFR 3.3

**Debtor means a person who owes a delinquent, nontax debt to the United States.--\***

### Debt record – from 7 CFR 3.3

**Debt record means the account, register, balance sheet, file, ledger, data file, or similar record of debts owed to any Federal agency with respect to which collection action is being pursued.--\***

**Definitions of Terms Used in This Handbook (Continued)****Debt Settlement**

**Debt settlement** is a compromise, adjustment or cancellation of an FLP debt.

**Delinquent – from 7 CFR 3.3**

**Delinquent** means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made, or as otherwise defined by program specific statutes or regulations.

**Delinquent Borrower**

**Delinquent borrower**, for loan servicing purposes, is a borrower who has failed to make all scheduled payments by the due date.

**Discharge**

A discharge is a court order, which relieves the debtor's obligation to pay the creditor any amounts unless already accounted for in a bankruptcy plan.

**\*--Discharged debt – from 7 CFR 3.3**

**Discharged debt** means any debt, or part thereof, that an agency has determined is uncollectible and has closed out or, in the case of FSA FLP, means the amount of debt that was discharged through bankruptcy proceedings where no further collection actions may be taken on that debt.

**Dismissed**

Dismissed usually refers to when the court makes the determination that the bankruptcy petition is not necessary, or the debtor fails to perform according to an established bankruptcy plan. It is the creditor's or Trustee's responsibility to bring nonperformance of a plan to the court's attention. When a bankruptcy is dismissed, the creditors' original security positions, payment schedules, and amounts owed are re-established, as if bankruptcy was never filed.

**Disposable Pay – for general DCIA purposes, from 7 CFR 3.3**

**Disposable pay** means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld including social security taxes and other withholding taxes, but not including any amount withheld pursuant to a court order.--\*

**Definitions of Terms Used in This Handbook (Continued)****Disposable Pay - for AWG purposes, from 7 CFR 3.52**

**Disposable pay** means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this section, "amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

**\*--Disposable Pay - for Federal Salary Offset purposes, from 7 CFR 3.71**

**Disposable pay** means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with 5 CFR parts 581 and 582). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in 5 CFR 581.105(b) through (f).

**Downpayment loan**

**Downpayment loan** is a type of FO loan made to beginning farmers and socially disadvantaged farmers to finance a portion of a real estate purchase under part 764, subpart E of this chapter.

**Economic Emergency loan**

**Economic Emergency loan** is a loan that was made or guaranteed to an eligible applicant to allow for continuation of the operation during an economic emergency which was caused by a lack of agricultural credit or an unfavorable relationship between production costs and prices received for agricultural commodities. EE loans are not currently funded; however, such outstanding loans are serviced by the Agency or the lender in the case of a guaranteed EE loan.--\*

\* \* \*

**Definitions of Terms Used in This Handbook (Continued)**

**\*--Employer - for AWG purposes, from 7 CFR 3.52**

**Employer** means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local governments, but does not include an agency of the Federal government.

**Entity**

**Entity** means a corporation, partnership, joint operation, cooperative, limited liability company, trust, or other legal business organization, as determined by the Agency, that is authorized to conduct business in the state in which the organization operates. Organizations operating as non-profit entities under Internal Revenue Code 501 (26 U.S.C. 501) and estates are not considered eligible entities for Farm Loan Programs purposes.

**Entity member**

**Entity member** means all individuals and all embedded entities, as well as the individual members of the embedded entities, having an ownership interest in the assets of the entity.--\*

**Equity**

**Equity** is the money value of a property or of an interest in a property in excess of claims or liens against that property.

**Family Living Expenses**

**Family living expenses** are the costs of providing for the needs of family members and those for whom the borrower has a financial obligation, such as alimony, child support, and care expenses of an elderly parent.

**Family Members**

**Family members** are the immediate members of the family residing in the same household with the borrower, or, in the case of an entity, with the operator.

**Farm Loan Programs**

**Farm Loan Programs** are Agency programs to make, guarantee, and service loans to family farmers authorized under the Act or Agency regulations.

**Farm Program**

**Farm Program** payments are benefits received from FSA for any commodity, disaster, or cost share program.

**Definitions of Terms Used in This Handbook (Continued)****\*--Feasible plan**

**Feasible plan** is when an applicant or borrower's cash flow budget or farm operating plan indicates that there is sufficient cash inflow to pay all cash outflow. If a loan approval or servicing action exceeds one production cycle and the planned cash flow budget or farm operating plan is atypical due to cash or inventory on hand, new enterprises, carryover debt, atypical planned purchases, important operating changes, or other reasons, a cash flow budget or farm operating plan must be prepared that reflects a typical cycle. If the request is for only one cycle, a feasible plan for only one production cycle is required for approval.

**Financial Statement – from 7 CFR 3.3**

**Financial statement** means a statement of financial condition at a given date that accurately reflects the debtor's assets, liabilities, income, and expenses.

**Fiscal Service – from 7 CFR 3.3**

**Fiscal Service** means the United States Department of the Treasury's Bureau of the Fiscal Service.

**Foreclosed**

**Foreclosed** is the completed act of selling security either under the power of sale in the security instrument or through judicial proceedings.

**Foreclosure Sale**

**Foreclosure sale** is the act of selling security either under the power of sale in the security instrument or through judicial proceedings.

**Garnishment - for AWG purposes, from 7 CFR 3.52--\***

**Garnishment** means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

**Garnishment Order (or Withholding Order) – from 7 CFR 3.52**

**Withholding order** means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms “wage garnishment order” and “**garnishment order**” have the same meaning as “withholding order.”

## Definitions of Terms Used in This Handbook (Continued)

### \*--Good faith

**Good faith** is when an applicant or borrower provides current, complete, and truthful information when applying for assistance and in all past dealings with the Agency, and adheres to all written agreements with the Agency including, but not limited to, loan agreement, security instruments, farm operating plans, and agreements for use of proceeds. The Agency considers a borrower to act in good faith, however, if the borrower's inability to adhere to all agreements is due to circumstances beyond the borrower's control. In addition, the Agency will consider fraud, waste, or conversion actions, when substantiated by a legal opinion from OGC, when determining if an applicant or borrower has acted in good faith.

### Guaranteed loan

**Guaranteed loan** is a loan made and serviced by a lender for which the Agency has entered into a Lender's Agreement and for which the Agency has issued a Loan Guarantee. This term also includes guaranteed lines of credit except where otherwise indicated.

### Hearing Official

**Hearing official.** For the purposes of salary offset, the hearing official is an Administrative Law Judge of the USDA or another individual not under the supervision or control of the USDA. For the purposes of administrative wage garnishment, the hearing official is selected pursuant to part 3, subpart E of this title.

**Note:** At this time, hearing officials for Federal Salary Offset and AWG are provided by Treasury.

### Household Living Expenses

**Household living expenses** are the costs of providing for the needs of family members and those for whom the borrower has a financial obligation, such as alimony, child support, and care expenses of an elderly parent.

### Individual-type Minor Program loans (IMP) – from 7 CFR 772.2

**Individual-type Minor Program loans (IMP):** Non-Farm Enterprise or Recreation loans to individuals.--\*

### Joint Operation

**Joint operation** is an operation run by individuals who have agreed to operate a farm or farms together as an entity, sharing equally or unequally land, labor, equipment, expenses, or income, or some combination of these items. The real and personal property is owned separately or jointly by the individuals.

**Definitions of Terms Used in This Handbook (Continued)****Judgment (or Judgment Debt)**

Judgment debt is established by a lender after a judgment is obtained through a legal process. A deficiency judgment can be obtained in cases where the liquidated security was not sufficient to pay the FLP debt in full and there are other assets from which collection can be made. A criminal, or restitution, judgment can be obtained in cases where security was sold and the monies were not submitted to FSA to be applied to the FLP debt. A criminal/restitution judgment can be obtained against the seller of the security (generally the FLP debtor, or other person who has access to the security), or the buyer of the security. A judgment obtained against the buyer of the security is generally referred to as third party judgment. The judgment debt accrues interest and other fees or costs according to the judgment order issued by the court.--\*

**Lien**

Lien is a legally enforceable claim against real or chattel property of another obtained as security for the repayment of indebtedness or an encumbrance on property to enforce payment of an obligation.

**Liquidated**

Liquidated is the completed act of selling security pledged as collateral.

**Loan Servicing Programs**

Loan servicing programs include any primary loan servicing program, conservation contract, current market value buyout, and homestead protection.

**\*--Loss claim**

Loss claim is a request made to the Agency by a lender to receive a reimbursement based on a percentage of the lender's loss on a loan covered by an Agency guarantee.

**Market Value**

Market value is the amount that an informed and willing buyer would pay an informed and willing, but not forced, seller in a completely voluntary sale.

**Minor Program – from 7 CFR 772.2**

Minor Program: Non-Farm Enterprise, Individual Recreation, Grazing Association, or Irrigation and Drainage loan programs administered or to be administered by FSA--\*

**Definitions of Terms Used in This Handbook (Continued)****Mortgage**

**Mortgage** is a legal instrument giving the lender a security interest or lien on real or personal property of any kind. The term “mortgage” also includes the terms “deed of trust” and “security agreement.”

**\*--Non-centralized administrative offset – from 7 CFR 3.3**

**Non-centralized administrative offset** means an agreement between a USDA creditor agency and a payment authorizing agency to offset the payments made by the payment authorizing agency to satisfy a USDA debt. The creditor agency and paying agency can be the same.

**Non-essential assets**

**Non-essential assets** are assets in which the borrower has an ownership interest, that:

**(1) Do not contribute to:**

- (i) Income to pay essential family living expenses, or**
- (ii) The farming operation; and**

**(2) Are not exempt from judgment creditors or in a bankruptcy action.--\***

**Non-Program Loan**

**Non-program loan** is a loan on terms more stringent than terms for a program loan that is an extension of credit for the convenience of the Agency, because the applicant does not qualify for program assistance or the property to be financed is not suited for program purposes. Such loans are made or continued only when it is in the best interest of the Agency.

**Office of the General Counsel (OGC)**

**OGC** is the OGC of the U.S. Department of Agriculture. Unless otherwise indicated, OGC refers to the Regional Attorney or Attorney-in-Charge in an OGC Field Office.

**Offset – from 7 CFR 3.3**

**Offset** means withholding funds payable by the United States to or held by the United States for a person to satisfy a debt owed by the payee.



**Definitions of Terms Used in This Handbook (Continued)**

\* \* \*

**OGC – from 7 CFR 3.3**

**OGC means the USDA Office of the General Counsel.**

**Past Due**

**Past due is when a payment is not made by the due date.**

**\*--Payee – from 7 CFR 3.3**

**Payee means a person who is due a payment from a payment authorizing agency and includes a person who is entitled to all or part of a payment.**

**Payment authorizing agency – from 7 CFR 3.3**

**Payment authorizing agency means a Federal agency or USDA agency that is authorized to disburse payments to a recipient.**

**Person – from 7 CFR 3.3**

**Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of public or private entity other than a Federal agency.**

**Prior Lien/Lienholder**

A prior lien is a lien that is recorded in front of an FSA lien on the same security. The individual or entity that has filed this lien is the prior lienholder.

**Private Collection Agency – from 7 CR 3.3**

**Private Collection Agency means any organization or corporation that specializes in debt collection is known as a collection agency or debt collector.--\***

**Definitions of Terms Used in This Handbook (Continued)****Program Loans**

**Program loans** include CL, FO, OL, and EM. In addition, for loan servicing purposes the term includes existing loans for the following programs no longer funded: SW, RL, EE, ST, and RHF.

**Promissory Note**

**Promissory note** is a written agreement to pay a specified sum on demand or at a specified time to the party designated. The terms “promissory note” and “note” are interchangeable.

**Recoverable Cost**

**Recoverable cost** is a loan cost expense chargeable to either a borrower or property account.

**Reviewing Officer - from 7 CFR 3-3**

**Reviewing officer** means a person designated by a creditor agency as responsible for conducting a hearing or providing documentary review on the existence of the debt and the propriety of an administrative collection action.

**\*--Salary Offset – for general DCIA purposes, from 7 CFR 3.3**

**Salary offset** means the deduction of money from the current pay account of a present or former Government employee as specified in 5 U.S.C. 5514 to satisfy a debt that person owes the Government.

**Salary Offset – additional clarification for Federal Salary Offset purposes, from 7 CFR 3.71**

**Salary offset** means a reduction of a debt by offset(s) from the disposable pay of an employee without his or her consent.--\*

**Security**

**Security** is property or right of any kind that is subject to a real or personal property lien. Any reference to “collateral” or security property” will be considered a reference to the term “security”.

**Security Instrument**

**Security instrument** includes any document giving the Agency a security interest on real or personal property.

**Definitions of Terms Used in This Handbook (Continued)**

**\*--Settlement or debt settlement – from 7 CFR 3.3**

**Settlement or debt settlement** means, for the purposes of this part only, the final disposition or resolution of a debt or claim that results in cancellation of any remaining balance owed and reporting of the canceled amount to the IRS as specified in § 3.90, and applicable IRS requirements.

**Softwood Timber Program loan**

**Softwood Timber Program loan** was available to eligible financially distressed borrowers who would take marginal land, including highly erodible land, out of production of agricultural commodities other than the production of softwood timber. ST loans are no longer available, however, such outstanding loans are serviced by the Agency.

**Soil and Water loan**

**Soil and Water loan** is a loan that was made to an eligible applicant to encourage and facilitate the improvement, protection, and proper use of farmland by providing financing for soil conservation, water development, conservation, and use; forestation; drainage of farmland; the establishment and improvement of permanent pasture; pollution abatement and control; and other related measures consistent with all Federal, State and local environmental standards. SW loans are no longer funded, however, such outstanding loans are serviced by the Agency.

**Third party converter – from 7 CFR 761.402(b)(1)**

**Third party converter** means an individual or entity who:

- (i) Is in possession of agency security property, or money from the sale of security, in relation to a loan or other debt that the individual or entity was not liable for; or
- (ii) Assists, or participates knowingly or unknowingly, in the transportation or sale of agency security, in relation to a loan or other debt that the individual or entity was not liable for; or
- (iii) Assists, or participates knowingly or unknowingly, in temporarily or permanently relocating or concealing the location of agency security property, or money from the sale of agency security, in relation to a loan or other debt that the individual or entity was not liable for.--\*

**Definitions of Terms Used in This Handbook (Continued)****Transfer and Assumption**

**Transfer and assumption** is the conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of a loan in return for the assuming party's binding promise to pay the debt outstanding or the market value of the collateral.

**\*--Treasury Offset Program (TOP) - from 7 CFR 3.3**

**TOP** means Treasury Offset Program, which is a centralized offset program that collects delinquent debts owed to Federal agencies and states.

**Note:** TOP is required by DCIA and is conducted according to:--\*

- 7 CFR Part 3, Subpart D
- 31 CFR Part 285, Subpart A
- 31 CFR 901.3(b).

**Unaccounted for Security**

**Unaccounted for security** is security for a direct or guaranteed loan that was misplaced, stolen, sold, or otherwise missing, where replacement security was not obtained or the proceeds from its sale have not been applied to the loan.

**U. S. Attorney**

**U. S. Attorney** is an attorney for the United States Department of Justice.

**Veteran**

**Veteran** is any person who served in the military, naval, or air service during any war as defined in section 101(12) of title 38, United States Code.

**\*--Waiver – for Federal Salary Offset purposes, from 7 CFR 3.71**

**Waiver** means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

**Withholding of Payment – from 7 CFR 3.3**

**Withholding of payment** means the action taken to temporarily prevent the payment of some or all amounts to a debtor under one or more contracts or programs.--\*

**Definitions of Terms Used in This Handbook (Continued)**

**\*--Withholding order – for AWG purposes, from 7 CFR 3.52**

**Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms “wage garnishment order” and “garnishment order” have the same meaning as “withholding order.”--\***

**Youth Loan**

**Youth loan is an operating type loan made to an eligible rural youth applicant to finance a modest income-producing agricultural project.**



## **State Supplements**

The following table lists required State supplements.

| <b>Subparagraph</b> | <b>Required State Supplement</b>              |
|---------------------|---|
| 3 B                 | Guidance on notary acknowledgement.           |
| 3 C                 | Guidance on signature requirements.           |
| 3 E                 | Using State-specific and State-created forms. |

**Note:** SED's shall:


- issue State supplements according to 1-AS, paragraph 216
- obtain approval of State supplements according to 1-AS, paragraph 220.





**Example of Due Process Letter to Refer Debt to Treasury for TOP, Cross-Servicing, and A WG**

The following is an example of the Due Process Letter to Refer Debt to Treasury.

|   |  |
|---|--|
| Rural Development   |  <b>United States Department of Agriculture</b>   |
| Office of the National<br>Financial and<br>Accounting<br>Operations Center                    | JULY 14, 2015  |
| 4300 Goodfellow<br>Boulevard<br>St. Louis, MO 63120<br>Voice 314.457.4152<br>Fax 314.457.4292 | <p>Dear Debtor/Co-debtor:</p> <p>Our records indicate that you are more than 90 days past due on a loan(s), or are subject to an outstanding judgment, have a delinquent lease or an equity receivable owed to the United States Department of Agriculture, Farm Service Agency (FSA). Under Federal law, Federal Agencies are required to offset any eligible Government payments due you to resolve the delinquent debt.</p>   |
|   | <p>Enclosed is a list of the delinquent debt(s) and the amount(s) due as of MM/DD/YYYY. You have 60 days to resolve this delinquent debt before an offset of payments will be made.</p>  |
|   | <p>The following options are available, if applicable, for settling this debt:</p>   |
|   | <ul style="list-style-type: none"> <li>Fully pay the delinquent debt outstanding at your local servicing office on or before MM/DD/YYYY. The amount could change because of protective advances, servicing actions, interest accrual, previous offsets, or other collections. Contact your local office for the correct amount.</li> <li>Make delinquent settlement arrangements with your local servicing office. If immediate payment is not possible or would create a serious financial hardship, you may request consideration of a written repayment/settlement agreement with FSA. Any such settlement proposal must be submitted in writing before and accepted by the Agency no later than MM/DD/YYYY. Your request must state your repayment proposal, including the specific terms. A current and signed financial statement must be provided with any settlement proposal or installment repayment request. The financial statement must list all income and expenses, and contain a balance sheet listing all assets and liabilities. An Agency approved repayment/settlement agreement must be in place to prevent offset.</li> <li>Inform your local servicing office of any bankruptcy proceedings. Debtors who have filed for bankruptcy and have an automatic stay in effect are not subject to collection through offset while the stay remains in place. If this provision applies, please submit a copy of the bankruptcy petition to your local servicing office immediately.</li> <li>Inform your local servicing office if you, as a borrower or co-borrower, are on active military duty. FSA borrowers called to active duty may be eligible for additional servicing options, including exclusion from referral to Treasury Offset Program (TOP). If this provision applies, please submit a copy of your military activation papers to your local servicing office by MM/DD/YYYY.</li> </ul> |
|   | <p>If your delinquent debt is a judgment debt, a delinquent lease, or the debt has been accelerated, administrative farm loan servicing authorities are no longer applicable.</p>  |
|   | <p>If the delinquent debt is not involved in a bankruptcy proceeding, or is not paid in full or settled by MM/DD/YYYY, the United States Treasury Department will be notified to collect by offset from the following Federal/State government payments due you, if applicable:</p>  |
|   | <ul style="list-style-type: none"> <li>Income tax refunds</li> <li>State tax refunds</li> <li>Federal salary, including military pay</li> <li>Federal retirement pay, including military retirement pay</li> <li>Contract or vendor payments</li> <li>State vendor payments</li> <li>Certain Federal benefits payments, such as Social Security (other than Supplemental Security Income), Railroad Retirement (other than tier 2), and Black Lung (part B) benefits</li> <li>Other Federal/State payments, including certain loans to you, that are not exempt from offset</li> </ul>   |
|   | <p>USDA is an equal opportunity provider and employer.</p>   |
|   | <p>If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at <a href="http://www.ascr.usda.gov/complaint_filing_cust.html">http://www.ascr.usda.gov/complaint_filing_cust.html</a>, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at <a href="mailto:program.intake@usda.gov">program.intake@usda.gov</a>.</p>  |

**Example of Due Process Letter to Refer Debt to Treasury for TOP, Cross-Servicing, and AWG  
(Continued)**



United States Department of Agriculture

All delinquent debt is referred to commercial credit bureaus on a quarterly basis.

Any debt remaining after all loan security has been liquidated may also be referred to Treasury for potential referral to private collection agencies and possible administrative wage garnishment. The amount referred for collection will include the delinquent principal, any accrued interest, protective advances and collection costs. The debt may also be referred to the United States Department of Justice for collection.

You have the right to inspect and obtain a copy of the records for the listed delinquent debt. To do so, send a written request to your local servicing office. Please provide your Social Security Number or Employer Identification Number and your complete mailing address with the request.

You have the right to request a review of the validity of the delinquent debt amount. Any request for such review must be made in writing to your local servicing office by MM/DD/YYYY. If you disagree with the delinquent debt amount and wish to dispute the record, please explain the reason for your challenge and include any written documents or evidence to support your position. You will be notified in writing of a determination.

If you are a Federal employee, you will have the opportunity for a hearing prior to FSA's submitting the debt for Federal salary offset. You will receive more information in a separate notice if this option applies to you.

Additional interest is accruing daily on this debt. The amount due will continue to increase until the delinquency is paid or the account is settled. Any debt written off by the Agency will be reported to Internal Revenue Service (IRS) on Form 1099-C, Cancellation of Debt.

If a joint Federal income tax return is filed, and your spouse is not responsible for this debt, please contact your local IRS office before filing your return to learn how to protect your spouse's share of the refund.

For further information, please call your local servicing office or our toll-free number, 800-428-9643.

USDA is an equal opportunity provider and employer.

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at [program.intake@usda.gov](mailto:program.intake@usda.gov).

**\*--Reviewing Alternative Repayment Agreements (ARA's)****A Overview**

ARA does not prevent, suspend, or delay any 5-FLP delinquent loan servicing actions or responsibilities. All servicing actions, including but not limited to PLS, debt settlement, acceleration, and foreclosure, continue to be processed.

**Exception:** Foreclosure action may only be suspended after an ARA is approved under subparagraph 23 D.

Debtors may submit a written ARA as an alternative to FSA collecting delinquent debt through:

- internal administrative offset (Part 3) according to 7 CFR 3.42(b)
- TOP (Part 4) according to 7 CFR 3.42(b)
- Federal salary offset (Part 5) according to 7 CFR 3.80

For Federal salary offset a debtor has 2 opportunities to request an ARA, within:

- 30 days of the date of the Notice of Intent to Offset Salary
- 15 days after the date of a hearing decision.

ARA may also be used when the borrower wants to pay the account in full instead of a debt settlement which would result in a loss to the agency. For information about the overall regulatory authorities for ARA, see paragraph 23.

When reviewing an ARA request, note the following:

For internal offset (Part 3) and TOP (Part 4):

**[7 CFR 3.42(b)] ...For proposed agreements to pay delinquent amounts owed on FSA FLP loans, the proposed payments in the agreement must cure the delinquency before the next loan installment is due, or within 90 days, whichever is sooner.**

For Federal salary offset:

**[7 CFR 3.80(a)] (2) For FSA FLP debt, an alternative repayment agreement submitted after a hearing decision must include a payment schedule similar to the payment schedule in the hearing decision and include payment amounts that are at least equal to the payment amounts in the hearing decision.**

**Note:** for Federal salary offset, the ARA does not need to bring the account current.--\*

**\*--Reviewing Alternative Repayment Agreements (ARA's) (Continued)****A Overview (Continued)**

ARA:

- may only be used to prevent or suspend the collection actions listed in this Exhibit or to pay the debt in full instead of debt settlement with a loss to the agency--\*
- must be acceptable to FSA
- does not preclude FSA from pursuing other debt collection remedies as permitted and/or required by DCIA and FCCS
- does not amend, replace, or supersede any signed promissory notes, security agreements, judgments, or other debt instruments.

**B Notification**

Borrowers are notified of the opportunity to submit ARA or written repayment plan when they receive:

- FSA-2701 for internal administrative offset and TOP; FSA-2701 provides the borrower with a 30-calendar day response period.
- 60-calendar day due process letter (Exhibit 7) sent before referral to Treasury, which includes notification concerning TOP and, if a balance remains after liquidation of security, cross-servicing and AWG; Exhibit 7 provides the borrower with a 60-calendar day response period
- \*--FSA-2710 for Federal salary offset; FSA-2710 provides the borrower with a 30-calendar day response period and is being revised to add the additional response period.
- notification from Treasury concerning cross-servicing and AWG.

Borrowers may submit their proposed ARA (FSA-2707 or FSA-2711) or other written repayment plan along with FSA-2037 and FSA-2038, or other written format for financial information, to FSA for internal administrative offset, TOP, and Federal salary offset. Late applications will be rejected by the authorized agency official. Rejection of ARA requests are not appealable. See subparagraph C.

**\*--Reviewing Alternative Repayment Agreements (ARA's) (Continued)****B Notification (Continued)**

After debts are referred to cross-servicing, borrowers must submit ARA request to Treasury or its collection agents for cross-servicing (Part 8) and AWG (Part 9) using any forms Treasury may require.

If Treasury requests FLP's input on an ARA for cross-servicing or AWG, the state office shall review the request, make a recommendation and respond to Treasury. If the request comes:

- through NFAOC, the response should be sent back through NFAOC so they are aware of any potential activity or automation needs concerning the account
- directly from Treasury, NFAOC should be copied on the response
- from the debtor, confirm the status of the case using Treasury's CSNG/ARTIVA system. If the account is still at cross-servicing, inform the debtor that they need to submit the request to Treasury. If the account has been returned from cross-servicing, the State Office can consider the request. If it has not yet been sent to cross-servicing, notify NFAOC to suspend sending the account to cross-servicing until state office has completed its review and advised the debtor of its decision.

**Note:** An ARA is not the same as a debt settlement offer. However, if an ARA is received in these cases, and the amounts the debtor is proposing to pay will not keep pace with interest accrual, it may be appropriate to remind the debtor that they can apply for debt settlement in an effort to negotiate resolution of the debt instead of the debt continuing to get larger despite the proposed payments.--\*

**C Reviewing and Processing ARA Requests**

The authorized agency official will:

- review ARA requests (FSA-2707, FSA-2711, or other written format) and all information/documentation necessary to make a decision concerning the borrower's proposal
- request any additional documentation needed to show that the debtor can make the proposed payments on time

**Example:** If a debtor proposes to sell nonsecurity property and submit the proceeds to FSA to resolve the delinquent FLP debt, FSA may require a copy of the sales contract and/or loan closing documents.

**\*--Reviewing Alternative Repayment Agreements (ARA's) (Continued)--\*****C Reviewing and Processing ARA Requests (Continued)**

- provide SED with sufficient documentation to make a decision concerning acceptance or rejection of the ARA request
- notify the debtor in writing of FSA's decision within 45 calendar days. A copy of the ARA with SED decision will be returned to the borrower
- ensure that a copy of ARA and any correspondence are maintained in the borrower's case file.

**Note:** If ARA request is approved, the letter will instruct the borrower to comply with the repayment plan.

\* \* \*

Rejection of ARA requests is not appealable. However, debtors may pursue any remaining review or appeal rights concerning FSA's decision to pursue the various collection actions and should be reminded if there is any time remaining to appeal.

ARA requests accepted by FSA will be monitored and serviced according to subparagraph D.

**D Monitoring and Servicing ARA's**

The authorized agency official will monitor ARA's accepted by FSA to ensure that all payments are received on time as agreed. ARA should be monitored until the account is paid current or the agreement must be canceled because of noncompliance.

**Note:** ARA does not amend, replace, or supersede the promissory note.

If the agreement must be canceled, the authorized agency official will:

- consult with the State Office before sending additional collection notices to the debtor
- provide timely notification to the debtor
- determine where in the collection or review/appeal process FSA may continue
- continue with all applicable and appropriate collection actions.

**\*--Reviewing Alternative Repayment Agreements (ARA's) (Continued)****E Disposable Pay Calculation for FSA-2711**

**Note:** There are different regulatory definitions for disposable pay. See exhibit 2 for the definition applicable to the case you are working on.--\*

Pursuant to OPM regulations, disposable pay for Federal salary offset is calculated as follows.

**[5 CFR 550.1103] Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with parts 581 and 582 of this chapter). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in §581.105(b) through (f) of this chapter.**

**[5 CFR 581.105] In determining the amount of any “moneys due from, or payable by, the United States” to any individual, there shall be excluded amounts which:**

**(a) Are owed by the individual to the United States, except that an indebtedness based on a levy for income tax under section 6331 of title 26 of the United States Code, shall not be excluded in complying with legal process for the support of minor children if the legal process was entered prior to the date of the levy;**

**(b) Are required by law to be deducted from the remuneration or other payment involved, including, but not limited to:**

**(1) Amounts withheld from benefits payable under title II of the Social Security Act where the withholding is required by law;**

**(2) Federal employment taxes;**

**(3) Amounts mandatorily withheld for the United States Soldiers' and Airmen's Home;**

**(4) Fines and forfeitures ordered by a court-martial or by a commanding officer; and**

**(5) Amounts deducted for Medicare;**

**\*--Reviewing Alternative Repayment Agreements (ARA's) (Continued)--\*****E Disposable Pay Calculation for FSA-2711 (Continued)**

(c) Are properly withheld for Federal, State, or local income tax purposes, if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he/she were entitled. The withholding of additional amounts pursuant to section 3402(i) of title 26 of the United States Code may be permitted only when the individual presents evidence of a tax obligation which supports the additional withholding;

(d) Are deducted as health insurance premiums, including, but not limited to, amounts deducted from civil service annuities for Medicare where such deductions are requested by the Health Care Financing Administration;

(e) Are deducted as normal retirement contributions, not including amounts deducted for supplementary coverage. For purposes of this section, all amounts contributed under sections 8351 and 8432(a) of title 5 of the United States Code to the Thrift Savings Fund are deemed to be normal retirement contributions. Amounts withheld as Survivor Benefit Plan or Retired Serviceman's Family Protection Plan payments are considered to be normal retirement contributions. Except as provided in this paragraph, amounts voluntarily contributed toward additional retirement benefits are considered to be supplementary; or

(f) Are deducted as normal life insurance premiums from salary or other remuneration for employment, not including amounts deducted for supplementary coverage. Both Servicemen's Group Life Insurance and "Basic Life" Federal Employees' Group Life Insurance premiums are considered to be normal life insurance premiums; all optional Federal Employees' Group Life Insurance premiums and life insurance premiums paid for by allotment, such as National Service Life Insurance, are considered to be supplementary.



**\*--Review and Determination for Pro Rata Offset**

**A Overview**

FSA FLP may pursue offset of a debtor's pro rate share of payments according to 7 CFR 3.45.

See paragraph 26 for the overall regulatory authority concerning pro rata offset for internal offset (Part 3) and TOP (Part 4), and paragraph 62 (Part 3) for notification requirements concerning entities. If a delinquent loan is in TOP, and the debtor is a co-obligor on the loan, the debtor will receive the 60-day due process letter for TOP (Exhibit 7). If the entity is a co-obligor on a delinquent loan at TOP, the entity will receive the 60-day due process letter for TOP (Exhibit 7).

**B Determining Debtor's Participation in an Entity**

Collections of delinquent debts through administrative offset may be taken against a debtor's pro rata share of payments due any entity in which the debtor participates when:

- (1) It is determined that FSA has a legally enforceable right under state law or Federal law, to pursue the entity payment;
- (2) A debtor has created a shell corporation before receiving a loan, or after receiving a loan, established an entity, or has reorganized, transferred ownership of, or otherwise changed in some manner the debtor's operation or the operation of a related entity for the purpose of avoiding payment of the FSA, FLP debt or otherwise circumventing Agency regulations;
- (3) Assets used in the entity's operation include assets pledged as security to the Agency which have been transferred to the entity without payment to the Agency of the value of the security or Agency consent to transfer of the assets;
- (4) A corporation to which a payment is due is the alter ego of a debtor; or
- (5) A debtor participates in, either directly or indirectly, the entity as determined by FSA.

**C Additional Guidelines**

The following guidelines will be used when consulting with the Regional OGC.--\*

- When was the entity formed? If it appears that the entity was formed to avoid the collection of an FSA debt, then this may be an indication that the entity may be the **alter ego** of the debtor. This determination is, however, not the controlling factor because pre-existing entities may be used as **alter egos**. The formation of an entity to avoid an offset is unacceptable and the debtor's **pro rata** share of any payments due the entity will be offset.
- After the entity is formed or after the entity has taken over the farming operation, has the farming operation really changed? In other words, is the entity just a new front for the individual's on-going farming operation? Compare the information on the FSA payment limitation forms. Is the borrower still performing the labor or management of the farming operation as before when there was no entity?

**\*--Review and Determination for Pro Rata Offset (Continued)--\***

**C Additional Guidelines (Continued)**

- Does the borrower own all or a major portion of the stock of the entity?
- Is the borrower an officer, director, or general manager of the entity?
- Do the borrower and entity have the same business offices?
- Did the borrower provide for or arrange for the financing of the entity?
- Is the borrower or entity adequately capitalized to run the farming operation?
- Where does the entity's capital come from?
- What are the entity's assets? Does it have a bank account, financial reserves, farm equipment, land or leased land, or other assets needed to operate a farm?
- Did the stockholders or partners in the entity actually make capital investments in the entity in exchange for the stock, or ownership interest, which they received? Is the ownership in the same proportion as the capital investments made?
- Does the borrower keep his property and business separate from that of the entity? Are the offices separate? Are there separate bank accounts? How are the entity funds, if any, used? Are they used to pay the expenses of the borrower? How does the borrower use the funds? Does the borrower pay the expenses of the entity? If so, are these loans formally documented with notes and security instruments? Does the entity repay the loans with interest at the current market rate?
- Does the borrower and entity observe corporate formalities, such as keep separate books and records, hold shareholder and board meetings, and have a corporate resolution authorizing the corporate representative to borrow money and otherwise conduct the business of the entity?
- Did the entity pay the State franchise taxes for corporations? Did the entity file a separate corporate or partnership income tax return? Did the entity pay salaries or other compensation to its officers? Did the entity ever declare a dividend? Does the borrower make all of the corporate decisions?

**\*--Reconsideration Review, Mediation and NAD Appeal**

**A Overview**

Use this exhibit and 1-APP for FSA-2701 and all other debt management and debt settlement decisions included in this handbook except where otherwise noted such as TOP.

For TOP (Exhibit 7) review see paragraph 107. Do not use this exhibit or 1-APP.

**[7 CFR 780.4] Applicability.**

**(a)(1) Except as provided in other regulations, this part applies to decisions made under programs and by agencies, as set forth herein:**

**(i) Decisions in programs administered by FSA to make, guarantee or service farm loans set forth in chapters VII and XVIII of this title relating to farm loan programs;**

**[7 CFR 780.6] Appeal procedures available when a decision is appealable.**

**...**

**(b) For decisions in agricultural credit programs administered by FSA, the following procedures are available:**

**(1) Reconsideration under §780.7 (subparagraph C);**

**(2) Mediation under §780.9 (subparagraph G);**

**(3) Appeal to NAD (subparagraph H).**

**B Borrower Must Request Within 30 Days**

**[7 CFR 780.15] (a) To the extent practicable, no later than 10 business days after an agency decision maker renders an adverse decision that affects a participant, FSA will provide the participant written notice of the adverse decision and available appeal rights.**

**(b) A participant requesting an appealability review by the State Executive Director of an agency decision made at the county, area, district or State level that is otherwise determined by FSA not to be appealable must submit a written request for an appealability review to the State Executive Director that is received no later than 30 calendar days from the date a participant receives written notice of the decision.**

**(c) A participant requesting reconsideration, mediation or appeal must submit a written request as instructed in the notice of decision that is received no later than 30 calendar days from the date a participant receives written notice of the decision....**

**(d) Notwithstanding the time limits in paragraphs (b) and (c) of this section, a request for an appealability review, reconsideration, or appeal may be accepted if, in the judgment of the reviewing authority with whom such request is filed, exceptional circumstances warrant such action. A participant does not have the right to seek an exception under this paragraph. FSA's refusal to accept an untimely request is not appealable.--\***

**\*--Reconsideration Review, Mediation and NAD Appeal (Continued)**

**B Borrower Must Request Within 30 Days Decision**

**(e) Decisions appealable under this part are final unless review options available under this part or part 11 (1-APP) are timely exercised.**

**(1) Whenever the final date for any requirement of this part falls on a Saturday, Sunday, Federal holiday, or other day on which the pertinent FSA office is not open for the transaction of business during normal working hours, the time for submission of a request will be extended to the close of business on the next working day.**

**(2) The date when an adverse decision or other notice pursuant to these rules is deemed received is the earlier of physical delivery by hand, by facsimile with electronic confirmation of receipt, actual stamped record of receipt on a transmitted document, or 7 calendar days following deposit for delivery by regular mail.**

**C Reconsideration - General**

**[7 CFR 780.7] (a) A request for reconsideration must be submitted in writing by a participant or by a participant's authorized representative and addressed to the FSA decision maker as will be instructed in the adverse decision notification.**

**(b) A participant's right to request reconsideration is waived if, before requesting reconsideration, a participant:**

- (1) Has requested and begun mediation of the adverse decision;**
- (2) Has appealed the adverse decision to a higher reviewing authority in FSA; or**
- (3) Has appealed to NAD.**

**(c) Provided a participant has not waived the right to request reconsideration, FSA will consider a request for reconsideration of an adverse decision under these rules except when a request concerns a determination of NRCS appealable under the procedures in §780.11, the decision has been mediated, the decision has previously been reconsidered, or the decision-maker is the Administrator, Deputy Administrator, or other FSA official outside FSA's informal appeals process.**

**(d) A request for reconsideration will be deemed withdrawn if a participant requests mediation or appeals to a higher reviewing authority within FSA or requests an appeal by NAD before a request for reconsideration has been acted upon.**

**(e) The Federal Rules of Evidence do not apply to reconsiderations. Proceedings may be confined to presentations of evidence to material facts, and evidence or questions that are irrelevant, unduly repetitious, or otherwise inappropriate may be excluded.**

**(f) The official decision on reconsideration will be the decision letter that is issued following disposition of the reconsideration request.**

**(g) A decision on reconsideration is a new decision that restarts applicable time limitations periods under §780.15 (1-APP) and part 11 (1-APP) of this title.--\***

**\*--Reconsideration Review, Mediation and NAD Appeal (Continued)**

**C Reconsideration – General (Continued)**

Reconsideration reviews and hearings will be:

- conducted by the reviewing officer designated by SED
- for FSA-2701 offset, limited to the existence of the debt, status of the delinquency, amount of the debt or delinquency, and propriety of the offset
- based on FSA records plus other relevant documentary evidence that may be submitted by the debtor within 10 calendar days after the request for FSA review is received.

**Note:** An FSA employee will **not** be the reviewing officer for any administrative offset case where the employee was involved in making the decision to offset.

The debtor:

- must submit a written explanation of why the debtor disagrees with offset and seeks review
- may request a documentary review or hearing

The reviewing officer must notify the debtor in writing:

- whether the review will be by documentary review or by hearing
- of the reason why a hearing will not be granted, if the debtor requested one
- of the procedures to be used in reviewing the documentary record
- of the date, location, and procedures to be used if review is by hearing.

**D Timeframe for Review or Hearing**

Unless otherwise arranged by mutual written agreement between the debtor and FSA, any documentary review or hearing will be conducted not less than 10 calendar days and no more than 45 calendar days after receipt of the request for review.--\*

**\*--Reconsideration Review, Mediation and NAD Appeal (Continued)**

**E Reconsideration Hearings**

Hearings will be conducted as informally as possible and in a fair and expeditious manner.

The reviewing officer will not use the formal rules of evidence about the admissibility of evidence or the use of evidence once admitted. However, clearly irrelevant material should not be considered, whether or not any party objects.

Any party to the hearing may offer exhibits, such as copies of financial records, telephone memoranda, or agreements, provided the opposing party is notified at least 5 workdays before the hearing.

Debtors may represent themselves or may be represented at their own expense by an attorney or other person.

The reviewing officer must document the substance of all significant matters discussed during the hearing; however, no official record or transcript of the hearing needs to be created. If a debtor requests that a transcript be made, it will be at the debtor's expense.

**F Reviewing Officer's Decision**

After the hearing or documentary review, the reviewing officer will:

- issue a written decision within 30 calendar days after the hearing or the documentary review

**Note:** The deadline for issuing the decision may be extended by the reviewing officer for good cause, but for no more than 30 calendar days without consent of the debtor. With the consent of the debtor, the deadline may be extended an additional 30 calendar days (for a total of 60 calendar days beyond the original deadline).

- promptly distribute copies of the decision to the FSA local servicing office, the debtor, and the debtor's representative
- if the decision is not in the debtor's favor:
  - give mediation and/or appeal rights to NAD according to 1-APP
  - For FSA-2701 offset process, notify the debtor that within 15 calendar days of the--\* reviewing officer's decision, the debtor may submit ARA, according to 7 CFR 3.42 (Exhibit 8).

**\*--Reconsideration Review, Mediation and NAD Appeal (Continued)**

**F Reviewing Officer's Decision (Continued)**

The decision:

- will include supporting rationale for the decision
- does not need to be lengthy or formal in style
- must address the substantive issues
- should address any significant procedural matter that was in dispute before or during the hearing or documentary review.

If the debtor does not request mediation (if not already mediated) or appeal to NAD, the FSA reviewing officer's decision is final.

Before any appeal hearing to NAD, the reviewing officer's decision constitutes FSA's final informal Agency decision. For FSA-2701 offset this includes the following issues:--\*

- all issues of fact relating to the basis of the debt, including the existence of the debt and the propriety of the administrative offset, in cases where the debtor previously had not been offered due process
- the existence of the debt and the propriety of the administrative offset, in cases where the debtor previously had been afforded due process as to issues of fact relating to the basis of the debt.

**\*--Reconsideration Review, Mediation and NAD Appeal (Continued)**

**G Mediation**

**[7 CFR 780.9] (a) Any request for mediation must be submitted after issuance of an adverse decision but before any hearing in an appeal of the adverse decision to NAD.**

**(b) An adverse decision and any particular issues of fact material to an adverse decision may be mediated only once:**

**(1) If resolution of an adverse decision is not achieved in mediation, a participant may exercise any remaining appeal rights under this part or appeal to NAD in accordance with part 11 (1-APP) of this title and NAD procedures.**

**(2) If an adverse decision is modified as a result of mediation, a participant may exercise any remaining appeal rights as to the modified decision under this part or appeal to NAD, unless such appeal rights have been waived pursuant to agreement in the mediation.**

**(c) Any agreement reached during, or as a result of, the mediation process shall conform to the statutory and regulatory provisions governing the program and FSA's generally applicable interpretation of those statutes and regulatory provisions.**

**(d) FSA will participate in mediation in good faith and to do so will take steps that include the following:**

**(1) Designating a representative in the mediation;**

**(2) Instructing the representative that any agreement reached during, or as a result of, the mediation process must conform to the statutes, regulations, and FSA's generally applicable interpretations of statutes and regulations governing the program;**

**(3) Assisting as necessary in making pertinent records available for review and discussion during the mediation; and**

**(4) Directing the representative to forward any written agreement proposed in mediation to the appropriate FSA official for approval.**

**(e) Mediations will be treated in a confidential manner consistent with the purposes of the mediation.**

See 1-APP for additional mediation guidance.

**H Appeals**

Appeals will be conducted by NAD according to 7 CFR Part 11 and 1-APP. When borrowers request NAD appeal, their right to request reconsideration review by FSA or mediation is waived or withdrawn according to 7 C FR 780.7 (subparagraph C) and 780.9 (subparagraph G).--\*



## Timeframe for Quarterly Referrals to TOP

The following is a timeframe for quarterly referrals to TOP.

\*--

| Process  | Date(s)                                 |
|--|---|
| <b>FY 2020 3rd Quarter TOP Referral</b>            |   |
| New selection <u>1</u> /                           | March 28, 2020                          |
| <b>Critical</b> pre-letter screening               | <b>March 31, 2020 to April 10, 2020</b> |
| FO mails 60-day due process letters                | April 14, 2020                          |
| Pre-certification screening                        | April 14, 2020 to June 19, 2020         |
| Certification <u>2</u> /                           | June 20, 2020                           |
| <b>FY 2020 4<sup>th</sup> Quarter TOP Referral</b> |   |
| New selection <u>1</u> /                           | June 27, 2020                           |
| <b>Critical</b> pre-letter screening               | <b>June 30, 2020 to July 10, 2020</b>   |
| FO mails 60-day due process letters                | July 14, 2020                           |
| Pre-certification screening                        | July 14, 2020 to September 18, 2020     |
| Certification <u>2</u> /                           | September 19, 2020 <u>4</u> /           |
| <b>FY 2021 1st Quarter TOP Referral</b>            |   |
| New selection <u>1</u> /                           | September 19, 2020 <u>4</u> /           |
| <b>Critical</b> pre-letter screening               | <b>September 22 to October 02, 2020</b> |
| FO mails 60-day due process letters                | October 06, 2020                        |
| Pre-certification screening                        | October 06 to December 11, 2020         |
| Certification <u>2</u> /                           | December 12, 2020                       |
| <b>FY 2021 2<sup>nd</sup> Quarter TOP Referral</b> |   |
| New selection <u>1</u> /                           | December 12, 2020                       |
| <b>Critical</b> pre-letter screening               | December 15, 2020 to January 08, 2021   |
| FO mails 60-day due process letters                | January 12, 2021                        |
| Pre-certification screening                        | January 12, 2021 to March 19, 2021      |
| Certification <u>2</u> /                           | March 20, 2021                          |
| <b>FY 2021 4<sup>th</sup> Quarter TOP Referral</b> |   |
| New selection <u>1</u> /                           | March 27, 2021                          |
| <b>Critical</b> pre-letter screening               | March 30, 2021 to April 09, 2021        |
| FO mails 60-day due process letters                | April 13, 2021                          |
| Pre-certification screening                        | April 13, 2021 to June 18, 2021         |
| Certification <u>2</u> /                           | June 19, 2021                           |

--\*

**Timeframe for Quarterly Referrals to TOP (Continued)**

\*\_\_

| <b>FY 2021 4th Quarter TOP Referral</b> |   |
|---|---|
| New Selection <u>1/</u>                 | June 26, 2021                                 |
| Critical pre-letter screening           | <b>June 29, 2021 to July 09, 2021</b>         |
| FO mails 60-day due process letters     | July 13, 2021                                 |
| Pre-certification screening             | July 13, 2021 to September 17, 2021           |
| Certification <u>2/</u>                 | September 18, 2021 <u>3/</u>                  |
| <b>FY 2022 1st Quarter TOP Referral</b> |   |
| New Selection <u>1/</u>                 | September 18, 2021 <u>3/</u>                  |
| <b>Critical</b> pre-letter screening    | <b>September 21, 2021 to October 01, 2021</b> |
| FO mails 60-day due process letters     | October 05, 2021                              |
| Pre-certification screening             | October 05, 2021 to December 10, 2021         |
| Certification <u>2/</u>                 | December 11, 2021 <u>4/</u>                   |
| <b>FY 2022 2nd Quarter TOP Referral</b> |   |
| New Selection <u>1/</u>                 | December 11, 2021 <u>4/</u>                   |
| <b>Critical</b> pre-letter screening    | <b>December 14, 2021 to January 07, 2022</b>  |
| FO mails 60-day due process letters     | January 11, 2022                              |
| Pre-certification screening             | January 11 to March 18, 2022                  |
| Certification <u>2/</u>                 | March 19, 2022                                |

- 1/ This includes all debts that appear eligible on ADPS, even if deleted in prior quarterly process.
- 2/ Loans with no delete code are moved from the “Borrower Eligible (N)” screens to the “Certified (Y)” Screens.
- 3/ The FY 2021 4th Quarter Certification is run on the same day as the FY 2022 1st Quarter Selection.
- 4/ The FY 2022 1st Quarter Certification is run on the same day as the FY 2022 2nd Quarter.--\*

## **TOP Offset Programmatic Delete Codes**

The following are delete codes that will be programmatically generated based on ADPS status of the debtor's account.

| <b>Code</b> | <b>Description</b>  |
|-------------|---|
| 02          | Account has a "BAP" or "SAA" flag.  |
| 13          | <ul style="list-style-type: none"><li>• A cost item reversal put a "Z99" paid code on the account.</li><li>• Transaction code "4A" or "4D" put a "Z97" paid code on the account.</li><li>• Equity Receivable record suspended or amortized.</li></ul> |
| 17          | Loan is current or paid in full by cash payment.  |
| 19          | <ul style="list-style-type: none"><li>• Loan is satisfied by other than those reasons in codes "13", "17", and "38".</li><li>• No address or invalid address.</li><li>• Suspension loan amortized.</li></ul>  |
| 38          | Account has been written off with a class of writeoff code other than "5".  |

**Notes:** If the account status in ADPS generates a delete code, both the borrower and co-borrower loans will be programmatically deleted using the same delete code.

**A suspend code (ZSPC on AI Status Screen) prevents a programmatic delete.**



**TOP Offset Manual Online Screen Delete Codes**

The following are descriptions of programmatic delete codes and the manual delete codes available for State Office use, and codes to use for FSA-2722 items 14 A, 16 A, and 16 B.

| <b>Code</b> | <b>Description</b>  |
|-------------|---|
| 01          | Foreclosure. Not eligible for offset under state law. Existence of a “FAP” flag is not a determining factor. These are accounts referred to OGC or DOJ for foreclosure and collection by offset would jeopardize the litigation under state law.  |
| 02          | Bankruptcy. Loan is either: <ul style="list-style-type: none"> <li>discharged in bankruptcy and debtor no longer liable</li> <li>under the jurisdiction of a bankruptcy court and the debt has not been reaffirmed.</li> </ul> <p><b>Note:</b> Existence of “BAP” flag is used during programmatic screening, and will prevent an account from being selected for TOP referral.</p>                             |
| 03          | OGC. Loan is referred to OGC for legal action (but is not code “01” or “02”) and offset is prohibited.  |
| 04          | Judgement. Judgement that is not eligible for FSA to refer to TOP and is not code “05” or “09”. Provide details in FSA-2722, item 16 B.   |
| 05          | Judgement-DOJ. Judgement is being serviced by DOJ.  |
| 06          | Forbearance-disaster declaration.   |
| 07          | Active military. Service members Civil Relief Act and/or Ronald W. Reagan National *--Defense Authorization Act. See 4-FLP, Part 11 for additional information.--*  |
| 09          | Judgement-Expired. Past the 20-year statute of limitations and judgement was not renewed. See paragraph 353 for additional information.   |
| 10          | Correction pending. Loan is being corrected.  |
| <b>11</b>   | <b>Moratorium 2008 Farm Bill.</b>   |
| 13          | Deceased. Borrower is deceased and debt will be moved to a living co-debtor.  |
| 16          | Repayment plan. A plan has been approved by FSA that will bring the account current.  |
| 17          | Timing and/or Suspend. Either: <ul style="list-style-type: none"> <li>timing of cash applications on ADPS will not generate a delete code in time to prevent referral to TOP, and the debtor is eligible for deletion because the payment will cure the delinquency</li> <li>loan is paid in full, but there is a suspended code on the account (“ZSPC” on the ADPS AI Screen is greater than zero.)</li> </ul> |
| 38          | Deceased Debt Settlement Pending. Borrower is deceased and the debt is in the process of being settled because there are no other liable parties to the debt, there is no security, and no collection is possible from the estate.  |
| N/A         | For unique circumstances listed in FSA-2722, item 16 A.   |



## TOP Offset Online Screens

### A Online Screen Information

The Borrowers Eligible for TOP Offset Screen and Borrowers Eligible for TOP Offset Certified Screen will be displayed with borrower and co-borrower information as follows.

| Field/Line                                      | Information  |
|---|--|
| ST CTY TIN                                      | Primary borrower's case number.  |
| TIN   | TIN for the primary borrower or co-borrower.   |
| CO  | Co-borrower's permanent alphabet letter (A-Z) or number (1-9) as a unique identifier.<br><br><b>Note:</b> It is critical that all co-borrowers' names, addresses, and TIN's be updated in SCIMS on an ongoing basis. The co-borrower/related entity status must be updated in the DLS Customer Profile.  |
| Case Number<br>(Located under<br>"Name" column) | The borrower's name will be displayed, if there are no co-borrowers selected or if both borrower and co-borrower are selected.<br><br>The co-borrower's name will be displayed, if only the co-borrower is selected.<br><br><b>Note:</b> For each co-borrower loan selected, the co-borrower's name will be displayed between the TIN and loan number. |
| FLG (Located<br>over "Delete<br>Date" column)   | "F" will be displayed if the account has a "FAP" flag.   |

**TOP Offset Online Screens (Continued)**

**B Accessing Online Screens**

County Offices may view and State Offices may modify borrower/co-borrower loans by selecting “TOPOFFST” on the Online Submenu Selection Menu. A borrower/co-borrower could have loans on both the Borrowers Certified for TOP Offset (Y) Screen and Borrowers Eligible for TOP Offset (N) Screen, depending on the status of each loan on ADPS. However, an individual loan for either a borrower or co-borrower may only be on 1 of the screens.

From the Borrower Select Menu, use the following applicable option.

| <b>Option</b> | <b>Authorized Users</b>  | <b>Step</b> | <b>Action</b>  |
|---------------|--------------------------|-------------|--|
| 1             | State Office             | 1           | In the “Enter State” field, enter the 2-digit non-FIPS State code (former FmHA State code).  |
|               |                          | 2           | In the “View Certified Borrowers” field, enter either of the following: <ul style="list-style-type: none"> <li>• “Y”, if the Borrower Eligible for TOP Offset/Certified Screen is needed</li> <li>• “N”, if the Borrowers Eligible for TOP Offset Screen is needed.</li> </ul> |
|               |                          | 3           | PRESS “Enter”. All borrower/co-borrower loans on that screen for the State will be displayed.  |
| 2             | State and County Offices | 1           | In the “Enter State” field, enter the 2-digit non-FIPS State code (former FmHA State code).  |
|               |                          | 2           | In the “Enter State and County” field, enter all 5 digits of FSA’s servicing office mail code.   |
|               |                          | 3           | In the “View Certified Borrowers” field, enter either of the following: <ul style="list-style-type: none"> <li>• “Y”, if the Borrower Eligible for TOP Offset/Certified Screen is needed</li> <li>• “N”, if the Borrowers Eligible for TOP Offset Screen is needed.</li> </ul> |
|               |                          | 4           | PRESS “Enter”. All borrower/co-borrower loans on that screen for the State will be displayed.  |



**TOP Offset Online Screens (Continued)**

**B Accessing Online Screens (Continued)**

| <b>Option</b> | <b>Authorized Users</b>  | <b>Step</b> | <b>Action</b>   |
|---------------|--------------------------|-------------|---|
| 3             | State and County Offices | 1           | In the “Enter Case Number” field, enter the entire 15-digit case number.  |
|               |                          | 2           | In the “View Certified Borrowers” field, enter either of the following: <ul style="list-style-type: none"> <li>• “Y”, if the Borrower Eligible for TOP Offset/Certified Screen is needed</li> <li>• “N”, if the Borrowers Eligible for TOP Offset Screen is needed.</li> </ul>            |
|               |                          | 3           | PRESS “Enter”. All borrower/co-borrower loans on that screen for the State will be displayed.   |
| 4             | State and County Offices | 1           | In the “Enter Tax ID” field, enter the 9-digit TIN for the primary borrower.  |
|               |                          | 2           | In the “View Certified Borrowers” field, enter either of the following: <ul style="list-style-type: none"> <li>• “Y”, if the Borrower Eligible for TOP Offset/Certified Screen is needed</li> <li>• “N”, if the Borrowers Eligible for TOP Offset Screen is needed.</li> </ul>            |
|               |                          | 3           | PRESS “Enter”. All borrower/co-borrower loans on that screen for the specified borrower TIN will be displayed.<br><br><b>Note:</b> Do not enter a co-borrower TIN because this will display a “Borrower Not Found” message. Entering borrower TIN will display any eligible co-borrowers. |
| 5             | State and County Offices |             | PRESS “Enter” to return to the Online Submenu Selection Menu.   |
| 6-12          | NFAOC                    |             | In the “Enter Option Code” field, enter applicable code to enable or disable the TOP screens, as needed.  |



## **AWG Reference Guide for LSPMD**

### **1 Treasury Actions**

#### **A Determination to Use AWG**

Once the borrower's account has been referred to Treasury for cross servicing, Treasury appoints PCA to act as an agent on behalf of Treasury to collect the debt. If an agreement cannot be reached on a payment method, AWG payments may be a tool used for collection. If Treasury elects to pursue collection through AWG, PCA will provide the borrower a notice at least 30 calendar days in advance notifying them as follows:

- that AWG may be held against their paycheck
- provide them the opportunity to inspect and copy Agency records related to the debt
- they may enter into a repayment agreement
- they may request a hearing to determine the validity of the debt, amount of the debt, or the debtor's ability to pay
- they have 15 calendar days to respond to the letter and if they do not respond within 15 calendar days, Treasury will issue the garnishment order and apply a 15 percent garnishment rate against their paychecks.

### **2 Borrower Requests**

#### **A Request to Inspect and/or Copy Records**

If the borrowers request to inspect and/or copy records, the FLP State and local offices must respond in a timely manner to these requests. See 3-INFO:

- paragraph 17 for information about records holding office responsibility
- paragraph 20 for information about legal basis for withholding information.

## **AWG Reference Guide for LSPMD (Continued)**

### **2 Borrower Requests (Continued)**

#### **B Request for ARA**

Borrowers may submit a written repayment agreement as an alternative to collection of the FLP debt through AWG. These requests are processed by Treasury, or PCA assigned by Treasury, to service the debt. Treasury may request assistance from FSA in determining the acceptability of ARA or debt settlement offers. In these cases, FLP offices must respond in a timely manner.

The authorized agency official may recommend acceptance of ARA according to  
\*--paragraph 244 and Exhibit 8.--\*

ARA's do **not** replace any signed promissory notes, security agreements, judgments, or other debt instruments.

#### **C Request for Hearing**

If the borrower requests a hearing within 15 calendar days, PCA notifies Treasury to suspend AWG against the debtor until the completion of the hearing process.

If the borrower's hearing request is received after 15 calendar days, FSA will provide a hearing to the borrower. However, Treasury will issue the garnishment order to the employer without any delay.

### **3 AWG Hearings According to 31 CFR 285.11(f)**

#### **A Hearing Process**

Treasury will forward request of hearing to OCFO, and OCFO will notify LSPMD.

A docket number and hearing date is supplied by Treasury's hearing official.

The hearing official will communicate the hearing information to the debtor, OCFO, and LSPMD.

## **AWG Reference Guide for LSPMD (Continued)**

### **3 AWG Hearings According to 31 CFR 285.11(f) (Continued)**

#### **A Hearing Process (Continued)**

The borrower can request to inspect their records held by FSA or delay the hearing date. Only justifiable grounds can delay the hearing.

Before the hearing, LSPMD and the debtor must provide evidence (subparagraph 245 D) to assist the hearing official in their ruling. The hearing official will notify LSPMD and the borrower of the deadlines for the submission of evidence for a written hearing.

The hearing can be held in-person, written, or by telephone. Most of Treasury's hearings are written hearings. LSPMD and the borrower will submit documents and other evidence to allow the hearing official to determine a decision.

Depending on the difficulty of the hearing, LSPMD or the borrower may seek legal representation at their own expenses.

FSA does not have to provide more than 1 hearing, based on the same grounds or objections, unless the debtor has new evidence. If a debtor has materially changed financial circumstance from the last hearing, FSA should grant the debtor another hearing to determine hardship.

#### **B AWG Decision**

The AWG hearing should be completed within 60 calendar days. During the hearing, if the borrower fails to appear, the debtor waives their right to a hearing and a calculated amount of AWG (not more than 15 percent) will be applied to the borrower's paycheck.

No garnishment will be held or collected against the debtor until Treasury's hearing official issues an AWG hearing decision even if the decision takes more than 60 calendar days.

The decision may have either of the following outcomes:

- if the debt is valid and should be collected, Treasury's hearing official will calculate the amount of AWG to be withheld

**Note:** The total AWG percentage of the debtor's paychecks depends on exclusions and financial hardships.

- if the debt is invalid, the debt is terminated.

**AWG Reference Guide for LSPMD (Continued)**

**3 A WG Hearings According to 31 CFR 285.11(f) (Continued)**

**B A WG Decision (Continued)**

The final hearing decision and any additional information are sent to OCFO, FSA, and the borrower. LSPMD will notify the applicable State Office.

If the decision terminates AWG, Treasury notifies PCA that the garnishment process has been terminated and the garnishment order is not executed.

**[31 CFR 285.11(f)(12)] The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 et seq.).**

**4 Garnishment**

**A Withholding Order**

When the hearing official decides the debt is valid, Treasury will issue a garnishment order that contains a certification of employer document and stipulates the amount of AWG to apply to the borrower's wages.

**B Employer Certification**

The employer complies with the order and returns the certification of employee document to Treasury.

**C Only One Garnishment Order**

DCIA authorizes Federal Agencies or collection agencies under contract with them to garnish up to 15 percent of the disposable earnings to repay defaulted debts owed the U.S. Government.

## **AWG Reference Guide for LSPMD (Continued)**

### **4 Garnishment (Continued)**

#### **D Multiple Garnishment Orders**

The total of all garnishment orders shall not exceed 25 percent of the employee's disposable earnings.

Both FLP and Farm Programs can obtain garnishment orders. The garnishment order with the earliest date has priority. The priority, or first, garnishment order will most likely receive a greater portion of the garnished wages.

**Example:** Garnishment Order A has priority over Garnishment Order B. Garnishment Order A is for the full maximum of 15 percent for a single garnishment order. Garnishment Order B must **not** exceed 10 percent ( $25\% - 15\% = 10\%$ ).

#### **E Borrower Consent to Garnish Larger Amount**

Withholding a larger amount will be negotiated and documented by the debtor's written consent, which will be provided to FLP, Treasury or PCA, and/or the debtor's employer.

### **5 Processing Garnishment Amounts and Collections**

#### **A Employer Processing**

The employer submits withheld amounts to Treasury. Treasury sends the funds to FSA in automated reports. Throughout the life of the garnishment, PCA will monitor the garnishments to ensure that the employer complies with the order.

#### **B Right of Action**

If the employer fails to comply with the order, PCA notifies Treasury and Treasury may take legal action against the employer to collect the debt.

#### **C FLP Processing**

AWG collections will be included with all other collections received from Treasury through cross-servicing and/or TOP.

## **AWG Reference Guide for LSPMD (Continued)**

### **5 Processing Garnishment Amounts and Collections (Continued)**

#### **D Borrowers With More Than One FSA loan**

If the debtor has more than one FSA loan, 1 loan will go through the AWG process and the others will continue through the normal referral process and be sent to PCA's for servicing. Once the loan being collected through AWG is paid in full, the other loans will be returned to FSA because there are no collections.

\*--Treasury's cross-servicing system was designed to prevent duplication of a debt by--\* blocking the use of the Agency debt ID more than once under FSA's bureau code. To resubmit the debt to Treasury for AWG collection, alter the Agency debt ID by adding an alpha character to the end of the original Agency debt ID.

**Example:** Agency debt ID is 123-45-6789. Resubmit the account as 123-45-6789A. If there are additional loans, continue adding alpha characters in order; such as A, B, C, etc.

During the AWG hearing process, the hearing official deals with the debtor's total FSA debt. There is no need to repeat the hearing process for each individual FSA loan.

### **6 Changes to Garnishment Amount**

#### **A Following Involuntary Separation**

Borrowers must communicate directly with Treasury and/or PCA's about their financial circumstances while accounts are referred to AWG and/or cross-servicing.

#### **B Financial Hardship**

Treasury will make any hardship determination on DAFLP's behalf and notify the borrower's employer of any adjustments to the garnishment amount. In cases where the garnishment amount has been adjusted because of hardship, Treasury will periodically request updated financial information from the FLP borrower to determine whether the hardship still exists and/or if the garnishment amount must be adjusted again.

### **7 Ending Garnishment and Refunds**

#### **A Ending Garnishment**

In cases where the debt is paid in full, Treasury will notify the employer to discontinue garnishment for FLP.

If the debtor has more than one FSA loan, FSA must resubmit each additional loan to Treasury according to subparagraph 247 B.



## **Approving Debt Settlements Under FCCS**

### **1 Previous Debt Forgiveness and Nonprogram Loans**

Based on the Federal Agriculture Improvement and Reform Act of 1996, borrowers are only entitled to 1 debt forgiveness under the CONACT direct loan program. There are no exceptions.

However, even though previous debt forgiveness has been received, debt settlements can be processed outside CONACT authorities. **This approval is based on FCCS at 31 CFR 902.1(a) for authority in paragraph 2, and 31 CFR 902.1 (b) for authority in paragraph 3, and not CONACT.**

**\*--[7 CFR 3.21 Referrals of debts to Justice. An agency will promptly refer to Justice for litigation debts on which aggressive collection activity has been taken in accordance with this part, and that cannot be compromised by the agency or on which collection activity cannot be suspended or terminated in accordance with 31 CFR parts 902 and 903. Agencies will follow the procedures specified in 31 CFR part 904 in making such referrals. Agencies will consult with OGC on all debts which are to be collected in foreign jurisdictions to determine how and if a referral to Justice will take place.--\*]**

### **2 SED Approval Authority**

SED's are authorized to approve:

- settlement of debt when the claim, exclusive of interest, penalties, and administrative costs is less than \$100,000

**Note:** Follow Part 12 for guidance in accepting and processing debt settlement requests. A copy of this exhibit will be attached to FSA-2732. For debt settlements that do not require the borrower's signature, use FSA-2731.

- cancellation of debts discharged under Chapter 7, 11, 12, or 13 of the bankruptcy code regardless of the amount of the debt

**Note:** The cancellation will be processed according to FSA-2731, if there are no remaining liable debtors.

## **Approving Debt Settlements Under FCCS (Continued)**

### **2 SED Approval Authority (Continued)**

- settlements **negotiated and approved** by DOJ

**Note:** Attach a copy of the DOJ approval to FSA-2731 or FSA-2732, as applicable.

- settlement of debt regardless of amount, when the local OGC determines that the debt is legally without merit

**Note:** A copy of the OGC opinion and this exhibit will be attached to FSA-2731 or FSA-2732, as applicable.

- settlement of debts that are not eligible for referral to DOJ, according to 31 CFR 904.4, because they are less than the referral amount.

### **3 Referral to DOJ**

If SED recommends settlement, but cannot approve the settlement according to paragraph 2, then SED must forward it to the Regional OGC with the following:

- information collected under Part 12
- completed Claims Collection Litigation Report, as required by 31 CFR 902.1, and 31 CFR 904.2.

If the Regional OGC concurs, any other information needed shall be included and forwarded to DOJ Civil Division or DOJ's Nationwide Central Intake Facility (NCIF), according to 31 CFR 904.1.

Settlements referred to DOJ that are rejected by DOJ will be denied by SED for the reasons stated by DOJ.

Borrowers will not be provided appeal rights for settlements rejected under this authority.

\*--However, rights to a NAD review of FSA's "appealability" decision will be provided.--\*

**Note:** For cases that are a combination of judgment and nonjudgment debt, and the judgment is retained by DOJ, coordinate debt settlement of the judgment debt and nonjudgment debt with DOJ as the approval official.

Settlements which **cannot** be recommended or forwarded to DOJ, will be rejected by SED. Appeal rights will be provided according to 1-APP.

For the applicable addresses for NCIF and the DOJ Civil Division, see the "Agency Briefing Guide" link <https://www.justice.gov/jmd/debt-collection-management-staff>

**Optional Guide to Document Asset Search**

**Asset Search for (Borrower's Name)**  
Prepared by (Name of FLO/FLM) – (Title of FLO/FLM)  
(Date Completed)

(Borrower's name) are FSA Borrowers. An asset search of the \_\_\_\_\_ County Courthouse has been completed and the following is for your information.

- (Borrower's name).
- Date of Birth: \_\_\_\_\_.
- Security Property locate at or was located at: \_\_\_\_\_ (sold).
- New mailing address: \_\_\_\_\_.
- Social Security Number/s: XXX-XX-XXXX and XXX-XX-XXXX.
- (Borrower) is employed with \_\_\_\_\_ and (Borrower) is employed with \_\_\_\_\_.
- Income is approximately \$ \_\_\_\_\_ per year.
- No record of Bankruptcy filings.
- Financial Institution account balances are normal checking and savings at \_\_\_\_\_ Bank, accounts for IRA Mutual Funds, Insurance annuities have been accounted for.
- A document search of the Courthouse records in \_\_\_\_\_ County did not reveal any other records other than the mortgages and financing statements in which FSA has taken. They sold security property and all monies have been applied to the account. There are no known remaining assets in which to collect from. Records revealed the following:
  - Real Estate Mtg – FSA 4/13/94 BK 00617 PG 00475 – 0.50 acres/dwelling
  - Real Estate Mtg – FSA 4/1/97 BK 00673 PG 00383 – 0.50 acres/dwelling
  - Real Estate Mtg – FSA 5/15/97 BK 00676 PG 00387 – 0.50 acres/dwelling
  - Real Estate Mtg – FSA 6/9/98 BK 00774 PG 00229 – 0.50 acres/dwelling
  - UCC-1 4/13/94 – FSA - 94-433
  - UCC-1 4/1/97 – FSA – 97-359.

**Optional Guide to Document Asset Search (Continued)**

- There were no delinquent Real Estate taxes.
- There were no State or Federal Tax liens outstanding.
- There were no Judgments on file.
- There were no mechanics liens on file.
- There were no Lis Pendens on file.
- There is no net recovery value in which to collect from.
- No other Real Estate owned.
- Financial records and/or tax returns are made part of file for review of future repayment ability or other assets or income available to apply to the indebtedness.
- Efforts to collect the debt have been made by way of administrative offset, and liquidation of security, to include real estate. Disposition of all property was accounted for on FSA-2040. The monies were applied to the account as an extra payment. A deficiency judgement is not requested due to lack of assets and no repayment ability.
- There is no known or predicated future inheritance.
- Based upon this examination of records, this information is made to and for the benefit of USDA/FSA.

Completed Examples of FSA-2731, Cancellation of Debt Without Application, and FSA-2731A, Cancellation of Debt Without Application (Continuation)

A Example 1

In the following completed example of FSA-2731, the borrowers have been returned from cross-servicing and the co-borrower is liable for all debt.

|   |                                 |   |               |                                     |                           |
|---|---------------------------------|---|---------------|-------------------------------------|---------------------------|
| This form is available electronically.  |                                 |   |               |                                     |                           |
| <b>FSA-2731</b><br>(12-12-16)   |                                 | U.S. DEPARTMENT OF AGRICULTURE<br>Farm Service Agency |               |                                     | Position 2                |
| <b>CANCELLATION OF DEBT WITHOUT APPLICATION</b><br><b>(RD-1956-1)</b>   |                                 |   |               |                                     |                           |
| 1. Account No: 00-000-000000000000  |                                 |   |               |                                     |                           |
| 2. Debt Owed Agency as of Date<br>(MM-DD-YYYY)<br>02-03-2015  |                                 | 3. Total Principal*:<br>\$ 174,805.42                 |               | 4. Total Interest*:<br>\$ 36,731.48 |                           |
|   |                                 |   |               | 5. Total:<br>\$ 211,536.90          |                           |
| 6. Primary Borrower Name<br>or Co-Borrower Name   | 7. Fund Code and<br>Loan Number | 8. Principal *  | 9. Interest * | 10. Total                           | 11. Settlement<br>Code 1/ |
| 6A.<br>Joe Smith  | 45-01                           | 6,431.05  | 1,225.63      | 7,656.68                            | 01                        |
|   | 41-02                           | 118,155.54  | 12,780.29     | 130,935.83                          | 01                        |
|   | 44-04                           | 5,394.01  | 351.46        | 5,745.47                            | 01                        |
|   | 43-10                           | 4,297.24  | 272.69        | 4,569.93                            | 01                        |
|   | 44-17                           | 40,527.58   | 22,101.41     | 62,628.99                           | 01                        |
| 6B.<br>Mary Smith   |                                 |   |               |                                     |                           |
| <input checked="" type="checkbox"/> Same as 6A <input type="checkbox"/> Different than 6A   |                                 |   |               |                                     |                           |
|   |                                 |   |               |                                     |                           |
|   |                                 |   |               |                                     |                           |
| 6C.   |                                 |   |               |                                     |                           |
| <input type="checkbox"/> Same as 6A <input type="checkbox"/> Different than 6A  |                                 |   |               |                                     |                           |
|   |                                 |   |               |                                     |                           |
|   |                                 |   |               |                                     |                           |
| 6D.   |                                 |   |               |                                     |                           |
| <input type="checkbox"/> Same as 6A <input type="checkbox"/> Different than 6A  |                                 |   |               |                                     |                           |
|   |                                 |   |               |                                     |                           |
|   |                                 |   |               |                                     |                           |
| 1/ ENTER THE FOLLOWING CODE(S) AS APPLICABLE in item 11 and attach supporting documentation:  |                                 |   |               |                                     |                           |
| "01" - All debt returned from cross-servicing as uncollectible  |                                 |   |               |                                     |                           |
| "02" - All debt returned from cross-servicing after paying compromise or adjustment offer   |                                 |   |               |                                     |                           |
| "03" - Obligor has been discharged of the debt under Chapter 7 bankruptcy   |                                 |   |               |                                     |                           |
| "04" - Obligor has been discharged of the debt under reorganization bankruptcy (Chapter 11, 12 or 13)*  |                                 |   |               |                                     |                           |
| "05" - Obligor is deceased or defunct   |                                 |   |               |                                     |                           |
| "06" - DOJ settlement negotiated in lieu of foreclosure or Judgment* plea agreement, or the remaining balance of the debt is not covered by the Judgment and determined by OGC to be legally without merit. |                                 |   |               |                                     |                           |
| "07" - DOJ - Civil Division settlement without application due to prior debt forgiveness with outstanding principal of \$100,000 or greater   |                                 |   |               |                                     |                           |
| "08" - Cancellation of Judgment debt  |                                 |   |               |                                     |                           |
| "09" - OGC has determined that the debt is legally without merit  |                                 |   |               |                                     |                           |
| "10" - Partial debt settlement*   |                                 |   |               |                                     |                           |
| "11" - Obligor signature cannot be obtained or has disappeared and it is not in the Agency's best financial interest to refer the account to cross-servicing  |                                 |   |               |                                     |                           |
| *For partial cancellation, enter the loan(s) and balance(s) being cancelled. Enter the remaining loan(s) and balance(s) under "remarks"   |                                 |   |               |                                     |                           |

--\*

Completed Examples of FSA-2731, Cancellation of Debt Without Application, and FSA-2731A, Cancellation of Debt Without Application (Continuation) (Continued)

A Example 1 (Continued)

| FSA-2731 (12-12-16)   |                                      | Page 2 of 2  |                                     |  |
|---|--------------------------------------|--|-------------------------------------|--|
| <p>12. Have all obligors been listed on this form? If "NO", attach this form and supporting documentation to FSA-2732 and/or attach FSA-2080(s) and supporting documentation to this form.</p> <p><b>NOTE:</b> If FSA-2732 is submitted by another liable party, settlement of the account must be processed using the appropriate settlement code (3K transaction) for the type of settlement on FSA-2732.</p> <p>13. Has the disposition of all FSA security identified on FSA-2028 been properly recorded on FSA-2045 or previous authorized form? If "NO", correct FSA-2045 or previous authorized form.</p> <p>14. Has the disposition of all real estate security described on the mortgage or deed of trust been properly accounted for accounted for in position 5 of the case file? If "NO", include required documentation in position 5 of the case file.</p> <p>15. Has the disposition of all other assets pledged as security, such as stocks, assignments of insurance policies and leaseholds, been properly accounted for in position 1 of the case file? If "NO", include documentation in position 1 of the case file.</p> <p>16. Remarks</p>  | YES                                  | NO   | N/A                                 |  |
|   | <input checked="" type="checkbox"/>  | <input type="checkbox"/>                             |                                     |  |
|   | <input checked="" type="checkbox"/>  | <input type="checkbox"/>                             | <input type="checkbox"/>            |  |
|   | <input checked="" type="checkbox"/>  | <input type="checkbox"/>                             | <input type="checkbox"/>            |  |
|   | <input type="checkbox"/>             | <input type="checkbox"/>                             | <input checked="" type="checkbox"/> |  |
|   |                                      |  |                                     |  |
| <p>17. An obligor: <input type="checkbox"/> has <input checked="" type="checkbox"/> has not received previous debt forgiveness <input type="checkbox"/> If an obligor has received prior debt forgiveness, the requirements of 7-FLP, Exhibit 34 have been met</p>  |                                      |  |                                     |  |
| REVIEW OFFICIAL'S CERTIFICATION   |                                      |  |                                     |  |
| <p><i>I have reviewed the case file and certify that documentation in the file supports the findings reported above. Based upon my review of the case file, each obligor meets the qualifications for the type of settlement code proposed.</i></p>   |                                      |  |                                     |  |
| 18A. Review Official's Signature  | 18B. Review Official's Name          | 18C. Review Official's Title                         | 18D. Date (MM-DD-YYYY)              |  |
| <i>/s/ James Doe</i>  | James Doe                            | Farm Loan Manager                                    | 02-03-2015                          |  |
| RECOMMENDING OFFICIAL'S CERTIFICATION   |                                      |  |                                     |  |
| <p>19. I Recommend: <input type="checkbox"/> Approval of this Debt Settlement <input type="checkbox"/> Rejection of this Debt Settlement</p>  |                                      |  |                                     |  |
| 20A. Recommending Official's Signature  | 20B. Recommending Official's Name    | 20C. Recommending Official's Title (FLC or Designee) | 20D. Date (MM-DD-YYYY)              |  |
| <i>/s/ Bill Jones</i>   | Bill Jones                           | Farm Loan Chief                                      | 02-12-2015                          |  |
| APPROVING OFFICIAL'S CERTIFICATION  |                                      |  |                                     |  |
| <p>21. I Hereby: <input checked="" type="checkbox"/> Approve this Debt Settlement <input type="checkbox"/> Reject this Debt Settlement <input type="checkbox"/> See FSA-2732 for Decision</p>   |                                      |  |                                     |  |
| 22A. State Executive Director's Signature   | 22B. State Executive Director's Name | 22C. Date (MM-DD-YYYY)                               |                                     |  |
| <i>/s/ Mary Brown</i>   | Mary Brown                           |  |                                     |  |
| <p>In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.</p> <p>Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.</p> <p>To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <a href="http://www.ascr.usda.gov/complaint_filing_cust.html">http://www.ascr.usda.gov/complaint_filing_cust.html</a> and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: <a href="mailto:program.intake@usda.gov">program.intake@usda.gov</a>. USDA is an equal opportunity provider, employer, and lender.</p> |                                      |  |                                     |  |

# Completed Examples of FSA-2731, Cancellation of Debt Without Application, and FSA-2731A, Cancellation of Debt Without Application (Continuation) (Continued)

## B Example 2

In the following completed examples of FSA-2731 and FSA-2731A, the borrower is an entity. The entity and all of the members of the entity, except 2, were discharged from Chapter 7 Bankruptcy. Of the 2 not discharged from bankruptcy, 1 member is deceased and 1 member resides in a nursing home and is incapacitated. In addition, 1 member was liable for only 1 loan.

This form is available electronically.

**FSA-2731**  
(12-12-16)

U.S. DEPARTMENT OF AGRICULTURE  
Farm Service Agency

Position 2

**CANCELLATION OF DEBT WITHOUT APPLICATION  
(RD-1956-1)**

1. Account No: 00-000-0000000000

2. Debt Owed Agency as of Date  
(MM-DD-YYYY)  
02-03-2014

3. Total Principal\*:  
\$ 282,778.66

4. Total Interest\*:  
\$ 631,013.87

5. Total:  
\$ 313,792.93

| 6. Primary Borrower Name<br>or Co-Borrower Name   | 7. Fund Code and<br>Loan Number | 8. Principal * | 9. Interest * | 10. Total  | 11. Settlement<br>Code <u>1/</u> |
|---|---------------------------------|----------------|---------------|------------|----------------------------------|
| 6A.<br>Doe Brother Farm   | 41-01                           | 154,283.60     | 14,673.85     | 168,957.45 | 03                               |
|   | 44-02                           | 65,396.46      | 4,013.21      | 72,409.67  | 03                               |
|   | 43-04                           | 15,247.37      | 1,051.14      | 16,998.51  | 03                               |
|   | 29-08                           | 44,151.23      | 11,275.67     | 55,426.90  | 03                               |
| 6B.<br>John Doe   |                                 |                |               |            |                                  |
| <input checked="" type="checkbox"/> Same as 6A <input type="checkbox"/> Different than 6A |                                 |                |               |            |                                  |
|   |                                 |                |               |            |                                  |
| 6C.<br>Mary Doe   |                                 |                |               |            | 05                               |
| <input type="checkbox"/> Same as 6A <input checked="" type="checkbox"/> Different than 6A |                                 |                |               |            |                                  |
|   |                                 |                |               |            |                                  |
| 6D.<br>Bill Doe   |                                 |                |               |            |                                  |
| <input checked="" type="checkbox"/> Same as 6A <input type="checkbox"/> Different than 6A |                                 |                |               |            |                                  |
|   |                                 |                |               |            |                                  |

1/ ENTER THE FOLLOWING CODE(S) AS APPLICABLE in Item 11 and attach supporting documentation:

"01" – All debt returned from cross-servicing as uncollectible  
 "02" – All debt returned from cross-servicing after paying compromise or adjustment offer  
 "03" – Obligor has been discharged of the debt under Chapter 7 bankruptcy  
 "04" – Obligor has been discharged of the debt under reorganization bankruptcy (Chapter 11, 12 or 13)\*  
 "05" – Obligor is deceased or defunct  
 "06" – DOJ settlement negotiated in lieu of foreclosure or Judgment\* plea agreement, or the remaining balance of the debt is not covered by the Judgment and determined by OGC to be legally without merit.  
 "07" – DOJ – Civil Division settlement without application due to prior debt forgiveness with outstanding principal of \$100,000 or greater  
 "08" – Cancellation of Judgment debt  
 "09" – OGC has determined that the debt is legally without merit  
 "10" – Partial debt settlement\*  
 "11" – Obligor signature cannot be obtained or has disappeared and it is not in the Agency's best financial interest to refer the account to cross-servicing  
 \*For partial cancellation, enter the loan(s) and balance(s) being cancelled. Enter the remaining loan(s) and balance(s) under "remarks"

--\*

Completed Examples of FSA-2731, Cancellation of Debt Without Application, and FSA-2731A, Cancellation of Debt Without Application (Continuation) (Continued)

B Example 2 (Continued)

| FSA-2731 (12-12-16)   |                                      | Page 2 of 2  |                                     |  |
|---|--------------------------------------|--|-------------------------------------|--|
| <p>12. Have all obligors been listed on this form? If "NO", attach this form and supporting documentation to FSA-2732 and/or attach FSA-2080(s) and supporting documentation to this form.</p> <p><b>NOTE:</b> If FSA-2732 is submitted by another liable party, settlement of the account must be processed using the appropriate settlement code (3K transaction) for the type of settlement on FSA-2732.</p>   | YES                                  | NO   | N/A                                 |  |
|   | <input checked="" type="checkbox"/>  | <input type="checkbox"/>                             |                                     |  |
| <p>13. Has the disposition of all FSA security identified on FSA-2028 been properly recorded on FSA-2045 or previous authorized form? If "NO", correct FSA-2045 or previous authorized form.</p>  | <input checked="" type="checkbox"/>  | <input type="checkbox"/>                             | <input type="checkbox"/>            |  |
| <p>14. Has the disposition of all real estate security described on the mortgage or deed of trust been properly accounted for accounted for in position 5 of the case file? If "NO", include required documentation in position 5 of the case file.</p>   | <input checked="" type="checkbox"/>  | <input type="checkbox"/>                             | <input type="checkbox"/>            |  |
| <p>15. Has the disposition of all other assets pledged as security, such as stocks, assignments of insurance policies and leaseholds, been properly accounted for in position 1 of the case file? If "NO", include documentation in position 1 of the case file.</p>  | <input type="checkbox"/>             | <input type="checkbox"/>                             | <input checked="" type="checkbox"/> |  |
| 16. Remarks   |                                      |  |                                     |  |
| <p>17. An obligor: <input type="checkbox"/> has <input checked="" type="checkbox"/> has not received previous debt forgiveness <input type="checkbox"/> If an obligor has received prior debt forgiveness, the requirements of 7-FLP, Exhibit 34 have been met</p>  |                                      |  |                                     |  |
| <b>REVIEW OFFICIAL'S CERTIFICATION</b>  |                                      |  |                                     |  |
| <p><i>I have reviewed the case file and certify that documentation in the file supports the findings reported above. Based upon my review of the case file, each obligor meets the qualifications for the type of settlement code proposed.</i></p>   |                                      |  |                                     |  |
| 18A. Review Official's Signature  | 18B. Review Official's Name          | 18C. Review Official's Title                         | 18D. Date (MM-DD-YYYY)              |  |
| <i>/s/ Sue Doe</i>  | Sue Doe                              | Farm Loan Specialist                                 | 02-03-2015                          |  |
| <b>RECOMMENDING OFFICIAL'S CERTIFICATION</b>  |                                      |  |                                     |  |
| <p>19. I Recommend: <input checked="" type="checkbox"/> Approval of this Debt Settlement <input type="checkbox"/> Rejection of this Debt Settlement</p>   |                                      |  |                                     |  |
| 20A. Recommending Official's Signature  | 20B. Recommending Official's Name    | 20C. Recommending Official's Title (FLC or Designee) | 20D. Date (MM-DD-YYYY)              |  |
| <i>/s/ Tom Brown</i>  | Tom Brown                            | Farm Loan Chief                                      | 02-12-2015                          |  |
| <b>APPROVING OFFICIAL'S CERTIFICATION</b>   |                                      |  |                                     |  |
| <p>21. I Hereby: <input checked="" type="checkbox"/> Approve this Debt Settlement <input type="checkbox"/> Reject this Debt Settlement <input type="checkbox"/> See FSA-2732 for Decision</p>   |                                      |  |                                     |  |
| 22A. State Executive Director's Signature   | 22B. State Executive Director's Name | 22C. Date (MM-DD-YYYY)                               |                                     |  |
| <i>/s/ Fred Smith</i>   | Fred Smith                           | 02-14-2015   |                                     |  |
| <p>In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.</p> <p>Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.</p> <p>To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <a href="http://www.ascr.usda.gov/complaint_filing_cust.html">http://www.ascr.usda.gov/complaint_filing_cust.html</a> and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: <a href="mailto:program.intake@usda.gov">program.intake@usda.gov</a>. USDA is an equal opportunity provider, employer, and lender.</p> |                                      |  |                                     |  |



Completed Examples of FSA-2731, Cancellation of Debt Without Application, and FSA-2731A, Cancellation of Debt Without Application (Continuation) (Continued)

B Example 2 (Continued)

This form is available electronically.

| FSA-2731A<br>(12-12-16)   |                                    | U.S. DEPARTMENT OF AGRICULTURE<br>Farm Service Agency |               | Position 2                          |                              |
|---|------------------------------------|---|---------------|-------------------------------------|------------------------------|
| CANCELLATION OF DEBT WITHOUT APPLICATION (RD-1956-1)<br>(Continuation)  |                                    |   |               |                                     |                              |
| 1. Account No: 00-000-0000000000  |                                    |   |               |                                     |                              |
| 2. Debt Owed Agency as of (Date)<br>(MM-DD-YYYY):<br>02-03-2014   |                                    | 3. Total Principal*:<br>\$ 282,778.66                 |               | 4. Total Interest*:<br>\$ 31,013.87 |                              |
| 5. Total:<br>\$ 313,792.53  |                                    |   |               |                                     |                              |
| 6. Primary Borrower Name<br>or Co-Borrower Name   | 7. Fund Code<br>and Loan<br>Number | 8. Principal *  | 9. Interest * | 10. Total                           | 11. Settlement<br>Code<br>1/ |
| 6E.<br>Jane Doe<br><input type="checkbox"/> Same as 6A <input checked="" type="checkbox"/> Different than 6A  | 29-08                              | 44,151.23   | 11,275.67     | 55,426.90                           | 03                           |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
| 6F.<br>Tom Doe<br><input type="checkbox"/> Same as 6A <input checked="" type="checkbox"/> Different than 6A   |                                    |   |               |                                     | 11                           |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
| 6G.<br>Betty Doe<br><input checked="" type="checkbox"/> Same as 6A <input type="checkbox"/> Different than 6A |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
| 6H.<br><input type="checkbox"/> Same as 6A <input type="checkbox"/> Different than 6A                         |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
| 6I.<br><input type="checkbox"/> Same as 6A <input type="checkbox"/> Different than 6A                         |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
| 6J.<br><input type="checkbox"/> Same as 6A <input type="checkbox"/> Different than 6A                         |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |
|   |                                    |   |               |                                     |                              |

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider, employer, and lender.

Completed Examples of FSA-2731, Cancellation of Debt Without Application, and FSA-2731A, Cancellation of Debt Without Application (Continuation) (Continued)

C Example 3

In the following completed example of FSA-2731, the primary borrower was discharged from Chapter 7 Bankruptcy. The co-borrower, who did not file bankruptcy, subsequently requested debt settlement and has submitted FSA-2732.

|   |  |   |                |                                    |            |                           |
|---|--|---|----------------|------------------------------------|------------|---------------------------|
| This form is available electronically.<br><b>FSA-2731</b><br>(12-12-16)   |  | U.S. DEPARTMENT OF AGRICULTURE<br>Farm Service Agency |                |                                    | Position 2 |                           |
| <b>CANCELLATION OF DEBT WITHOUT APPLICATION<br/>(RD-1956-1)</b>   |  |   |                |                                    |            |                           |
| 1. Account No: 00-000-000000000000  |  |   |                |                                    |            |                           |
| 2. Debt Owed Agency as of Date<br>(MM-DD-YYYY)<br>02-03-2015  |  | 3. Total Principal*:<br>\$ 10,958.63                  |                | 4. Total Interest*:<br>\$ 1,327.04 |            | 5. Total:<br>\$ 12,285.67 |
| 6. Primary Borrower Name<br>or Co-Borrower Name   |  | 7. Fund Code and<br>Loan Number                       | 8. Principal * | 9. Interest *                      | 10. Total  | 11. Settlement<br>Code 1/ |
| 6A.<br>Joe Farmer   |  | 44-01   | 431.05         | 1,225.63                           | 1,656.68   | 03                        |
|   |  | 44-02   | 10,527.58      | 101.41                             | 10,628.99  | 03                        |
|   |  |   |                |                                    |            |                           |
| 6B.   |  |   |                |                                    |            |                           |
| <input type="checkbox"/> Same as 6A <input type="checkbox"/> Different than 6A  |  |   |                |                                    |            |                           |
|   |  |   |                |                                    |            |                           |
| 6C.   |  |   |                |                                    |            |                           |
| <input type="checkbox"/> Same as 6A <input type="checkbox"/> Different than 6A  |  |   |                |                                    |            |                           |
|   |  |   |                |                                    |            |                           |
| 6D.   |  |   |                |                                    |            |                           |
| <input type="checkbox"/> Same as 6A <input type="checkbox"/> Different than 6A  |  |   |                |                                    |            |                           |
|   |  |   |                |                                    |            |                           |
| 1/ ENTER THE FOLLOWING CODE(S) AS APPLICABLE in Item 11 and attach supporting documentation:  |  |   |                |                                    |            |                           |
| *01* – All debt returned from cross-servicing as uncollectible<br>*02* – All debt returned from cross-servicing after paying compromise or adjustment offer<br>*03* – Obligor has been discharged of the debt under Chapter 7 bankruptcy<br>*04* – Obligor has been discharged of the debt under reorganization bankruptcy (Chapter 11, 12 or 13)*<br>*05* – Obligor is deceased or defunct<br>*06* – DOJ settlement negotiated in lieu of foreclosure or Judgment* plea agreement, or the remaining balance of the debt is not covered by the Judgment and determined by OGC to be legally without merit.<br>*07* – DOJ – Civil Division settlement without application due to prior debt forgiveness with outstanding principal of \$100,000 or greater<br>*08* – Cancellation of Judgment debt<br>*09* – OGC has determined that the debt is legally without merit<br>*10* – Partial debt settlement*<br>*11* – Obligor signature cannot be obtained or has disappeared and it is not in the Agency's best financial interest to refer the account to cross-servicing<br>*For partial cancellation, enter the loan(s) and balance(s) being cancelled. Enter the remaining loan(s) and balance(s) under "remarks" |  |   |                |                                    |            |                           |

Completed Examples of FSA-2731, Cancellation of Debt Without Application, and FSA-2731A, Cancellation of Debt Without Application (Continuation) (Continued)

C Example 3 (Continued)

| FSA-2731 (12-12-16)   |                                      | Page 2 of 2  |                                     |  |
|---|--------------------------------------|--|-------------------------------------|--|
| <p>12. Have all obligors been listed on this form? If "NO", attach this form and supporting documentation to FSA-2732 and/or attach FSA-2080(s) and supporting documentation to this form.</p> <p><b>NOTE:</b> If FSA-2732 is submitted by another liable party, settlement of the account must be processed using the appropriate settlement code (3K transaction) for the type of settlement on FSA-2732.</p> <p>13. Has the disposition of all FSA security identified on FSA-2028 been properly recorded on FSA-2045 or previous authorized form? If "NO", correct FSA-2045 or previous authorized form.</p> <p>14. Has the disposition of all real estate security described on the mortgage or deed of trust been properly accounted for accounted for in position 5 of the case file? If "NO", include required documentation in position 5 of the case file.</p> <p>15. Has the disposition of all other assets pledged as security, such as stocks, assignments of insurance policies and leaseholds, been properly accounted for in position 1 of the case file? If "NO", include documentation in position 1 of the case file.</p> <p>16. Remarks</p>  | YES                                  | NO   | N/A                                 |  |
|   | <input type="checkbox"/>             | <input checked="" type="checkbox"/>                  |                                     |  |
|   | <input checked="" type="checkbox"/>  | <input type="checkbox"/>                             | <input type="checkbox"/>            |  |
|   | <input type="checkbox"/>             | <input type="checkbox"/>                             | <input checked="" type="checkbox"/> |  |
|   | <input type="checkbox"/>             | <input type="checkbox"/>                             | <input checked="" type="checkbox"/> |  |
| <p>17. An obligor: <input type="checkbox"/> has <input checked="" type="checkbox"/> has not received previous debt forgiveness <input type="checkbox"/> If an obligor has received prior debt forgiveness, the requirements of 7-FLP, Exhibit 34 have been met</p>  |                                      |  |                                     |  |
| <p><b>REVIEW OFFICIAL'S CERTIFICATION</b></p>   |                                      |  |                                     |  |
| <p><i>I have reviewed the case file and certify that documentation in the file supports the findings reported above. Based upon my review of the case file, each obligor meets the qualifications for the type of settlement code proposed.</i></p>   |                                      |  |                                     |  |
| 18A. Review Official's Signature  | 18B. Review Official's Name          | 18C. Review Official's Title                         | 18D. Date (MM-DD-YYYY)              |  |
| <i>/s/ Jerry Doe</i>  | Jerry Doe                            | Farm Loan Officer                                    | 01-03-2015                          |  |
| <p><b>RECOMMENDING OFFICIAL'S CERTIFICATION</b></p>   |                                      |  |                                     |  |
| <p>19. I Recommend: <input checked="" type="checkbox"/> Approval of this Debt Settlement <input type="checkbox"/> Rejection of this Debt Settlement</p>   |                                      |  |                                     |  |
| 20A. Recommending Official's Signature  | 20B. Recommending Official's Name    | 20C. Recommending Official's Title (FLC or Designee) | 20D. Date (MM-DD-YYYY)              |  |
| <i>/s/ Jane White</i>   | Jane White                           | Farm Loan Chief                                      | 01-14-2015                          |  |
| <p><b>APPROVING OFFICIAL'S CERTIFICATION</b></p>  |                                      |  |                                     |  |
| <p>21. I Hereby: <input checked="" type="checkbox"/> Approve this Debt Settlement <input type="checkbox"/> Reject this Debt Settlement <input checked="" type="checkbox"/> See FSA-2732 for Decision</p>  |                                      |  |                                     |  |
| 22A. State Executive Director's Signature   | 22B. State Executive Director's Name | 22C. Date (MM-DD-YYYY)                               |                                     |  |
|   |                                      |  |                                     |  |
| <p>In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.</p> <p>Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.</p> <p>To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <a href="http://www.ascr.usda.gov/complaint_filing_cust.html">http://www.ascr.usda.gov/complaint_filing_cust.html</a> and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: <a href="mailto:program.intake@usda.gov">program.intake@usda.gov</a>. USDA is an equal opportunity provider, employer, and lender.</p> |                                      |  |                                     |  |

